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CONSTITUTIONAL HISTORY

OF

ENGLAND

up to 1485

(A College Text-book)

BY

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PART I

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PREFACE

Having to teach the English Constitutional History in the B. A. and M. A. classes for a number of years I found that the current text-books did not fully meet the wants of Indian students. Somehow or the other they felt a dislike for the subject which, though greatly interesting and instructive, was for them difficult to understand. I have tried here to meet this difficulty by simplifying the presentation of the subject. There is nothing original in this book; only its method of presentation is, I feel, a little different. It is written with a view to meet the wants and difficulties of the Indian students. I have also tried to give authoritative views on some of the vexed questions of the English Constitutional History. The problems of origins and nature of early social and political institutions are always difficult to solve, the evidence being scanty. I was helped in undertaking this extremely difficult task by my three years' studies in Oxford under Dr. Ernest Barker, Paul Vinogradoff and H. W. C. Davis who used to lecture to us on the early Constitutional History and the social and political institutions of England. I have also read and consulted a number of standard works and monographs of such constitutional historians as Stubbs, Maitland and Vinogradoff, and such critical scholars as Emile Pasquet, Petit Dutailles, Pollard, Chadwick, Adams and others who have reconstructed the early Constitutional History of England.

I do not know how far my attempt, perhaps the first on the subject by an Indian, is successful. I am anxious to know its value from competent critics. Their valued criticism will remove the deficiencies in the book and will help me in my studies and writing.

Hindu University Benares,
1st July, 1932.

S. V. PUNTAMBEKAR.

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CONSTITUTIONAL
HISTORY OF ENGLAND

CHAPTER I.

INTRODUCTION

History is a complex result of human character and territorial conditions. It is firstly a chronological record of the past events of a people either nomadic or settled. Secondly, it is a study of the various human and environmental forces which underlie those events and of their causes and effects. Thirdly, it is an interpretation of human achievements in the past in the light of total human development. Consequently it describes the characters, customs, laws, beliefs and institutions of a people and explains the course of their evolution with its attendant revolutions and convulsions.

History, its nature and scope.

History is not merely "past politics." It records, studies and interpretes all the various aspects of a people's life in their origin, growth, stagnation or decay. These aspects are political, social, religious, economic, cultural and constitutional.

Constitutional History does not deal with one set of facts but with all the facts of history, and uses them in understanding the development of the political institutions, such as the Executive, the Judicature and the Legislature, and the principles of their interrelation and working, at various periods in the history of a people. The political laws and institutions of a people depend largely on their character, traditions and environmental needs. These are not constant factors. They change

Constitutional history.

under the various influences and forces of a complex character, human and circumstantial.

Political history.

Political history looks at these facts as they affect the state policy or statecraft generally, that is, its political relations abroad and its stability at home, its territorial expansion and unity, its wars, conquests and alliances, and the migrations and revolutions of its classes. It describes the actions and adventures of its people from the point of view of its safety and independence, its unity and ambition.

Constitution, its definition.

Constitution denotes the structure of the Government of a country. It consists, according to Dicey, of "all rules which directly or indirectly affect the distribution or exercise of the sovereign power of the state". It is the form and organisation of a particular state, embodying the principles or rules, according to which the powers of the government, the rights of the governed, and the relations between the two are adjusted.

Its classification.

Constitutions are now classified as *written* and *unwritten*, *rigid* and *flexible*. The English constitution is written both in its charters and statutes, and unwritten in its customs and conventions. It is flexible, that is, easy to change by the process of ordinary legislation. It is not a rigid constitution which can be changed or modified only by some extraordinary method of legislation. Rigid constitutions are written constitutions.

Constitutions are also classified as *despotic* or *democratic*, *unitary* or *federal*, *parliamentary* or *presidential*. Despotic forms are irresponsible to or unlimited by any law, and democratic are limited and defined by laws and chiefly rest on the consent of the governed. In Parliamentary forms (also known as 'cabinet' or 'responsible' forms) the tenure of office of the executive is dependent on the will of the legislature, and its chief ministers are chosen

from amongst the members of the legislature. Responsibility of the ministers to the legislature is its keynote. In Presidential forms the tenure of office of the Executive is independent of the will of the legislature and the President or the Head of the Executive is elected independently by the people. The executive needs not and does not resign on an adverse vote of the legislature. Its members are appointed and removed by the President. They are his advisers and subordinates. In the Unitary forms the local authorities, their powers and functions exist by a delegation of power from the central Government. The central Government possesses the sovereign power. Local bodies are its agents. England possesses a unitary form. The Federal form consists of state governments and the central government regulating the common affairs of the union formed by two or more states. It has a written constitution in which are laid down the powers and functions of the central or federal bodies and the various federating states.

The English Constitution, its chief characteristics.

The English constitution firstly is a growth. It has evolved gradually during the course of the last fifteen hundred years. It is the result of the struggles between her monarchs and various classes to find a modus vivendi politically based on the democratic principles of government.

Secondly, the sovereignty of the king-in-parliament is its dominant feature. It has, according to Dicey, the right to make or unmake any law whatever. The law of England does not recognise any person or body as having a right to over-ride or to set aside the legislation of the parliament. It possesses undisputed or absolute power throughout the country.

Thirdly, the rule or supremacy of law is its another characteristic. It means, according to Dicey, (1) the absence of arbitrary power on the part of government. No man is punishable except for a distinct breach of law proved in the ordinary legal manner before the ordinary courts of the land. There is no

discretionary power left to the executive in matters of arrest, trial, imprisonment or expulsion. (2) No man is above the law. Every man or official whatever be his rank or condition is subject to the ordinary law of the land and amenable to the jurisdiction of the ordinary tribunals. It recognises the legal equality of all classes. There is no separate law for officials administered by official bodies. (3) The general principles or rules of the constitution are the result of judicial decisions determining the rights of private persons in particular cases brought before the courts.

Fourthly, the growth of customs and conventions which are in the nature of consitutional understandings is still another feature. They are not laws which will be enforced by the courts, but maxims of public policy which make the working of the consitutional machinery smooth and effective.

Fifthly, the king is the ceremonial centre of the constitution. From him in theory emanates everything. He is the source and guardian of all powers, laws and rights.

The Land.

The land of great Britain is an island. Its sea, soil and coast attracted from very early times foreign races. They conquered and settled in it. This resulted in a mixed but vigorous population who created an independent state, and later on, after the age of geographical discoveries and maritime enterprises, developed a great nation at home and a great commercial and military empire abroad.

The people.

The races whose character and culture moulded the history of great Britain were Keltics, Anglo-Saxons, Danes and Normans and came from outside. The Keltics who began to come about the sixth century B. C. have not played a large part. The part played by the Anglo-Saxons, Danes and Normans is, however, very great. It is the contact and amalgamation

of their ideas and institutions which laid the foundations of the English constitution, and it is their political and religious needs which contributed to its growth and perfection.

The Keltic period 600 B.C.—55 B.C.

Kelts came from the continent in successive tribal waves. They were organised on a tribal basis. They had no territorial organisation in social, political or economic matters. Tribes had their chiefs and leaders in war. They were mutually hostile.

Their social and political life.

Customs regulated their life. Family was the important unit in their tribal society. It had its own customs, rights and duties. Justice was the justice of the clan which protected or punished its members and exacted either vengeance or payment for injuries done from outsiders. The conquered were treated as slaves.

Their economic life.

Hunting, fishing, herding, weaving were some of their occupations. Agriculture was developing slowly. Their hamlets were weak structures of mud and wattles. They had some sort of an open field system for the purposes of cultivation. They had not the large nucleated townships of the Teutons. The typical Keltic settlement consisted of a family group occupying one common dwelling or a hamlet of several houses. There were some larger villages in connection with markets or places of common meeting. There was no real town life.

Their religious life.

Their religion consisted of a worship of local Gods and Goddesses supposed to be inhabiting caves and mountains, trees and forests, springs and other natural places and objects. They had an organised caste of Druids as priests who controlled learning, distributed justice and imposed penalties for breaches of law and custom.

There was no political unity among the Kelts and

hence there was no united opposition to the Roman invasion and conquest. The Romans made Britain a diocese in in the prefecture of Gauls (Gaul, Spain and Britain). It was ruled over by a vicar who was responsible to the prefect. It was divided into five provinces. The vicar looked after the civil administration. Military affairs were under the control of three officers; (1) the Count of the Britains who was the supreme military commander. (2) the Duke of the Britains who was a commander in the provinces, and (3) the Count of the Saxon shore who was a commander of the forts along the east coast and of the channel fleet. The provinces included the cantons or tribal areas and the towns created by the Romans.

Roman Period (55 B.C.—410 A.C.).

Their Government.

The Roman law and administration did not affect much the social and political life of the people. The Roman occupation and administration were largely of a military character. Romans owned the land and established country villas or big estates, and built towns which were centres of some sort of municipal administration with a restricted franchise and which possessed temples, baths and well-built houses. Some towns like London became commercial centres. The villa was an estate adorned with mosaic, frescoes and baths and worked by coloni (serfs) who were bound to the soil and to its owner under strict rules.

Effects of their rule.

The Romans however did not build any civil institution of a permanent character which could change the political and social life of the conquered people. The Roman civilisation in towns and villas did not take root in the soil. They did not succeed in Latinising Britain. The towns were mostly camps and forts and not real free institutions. They merely kept peace and did not develop any civil liberty. They were easy going in their dealings with the beliefs and customs of the conquered. The old primitive villages continued. Cultivation was increased by the cutting down of forests

and the draining of fens, and large exports of corn were made from the country. After 410 A.C. when the Romans withdrew, the Kelts were still found to be organised socially and politically in the old tribal way. The life of the cities and villas, the arts and the political organisation of the Roman Empire decayed rapidly.

Religion.

Christianity entered Britain during this period. It did not however create any unity of religious faith and organisation. Old Druidical religion, Roman religion and other cults remained. There were no restrictions on their beliefs and practices. The rulers would only restrict their activities from political motives, when a challenge to the imperial authority was made.

CHAPTER II.

THE EARLY ANGLO-SAXON PERIOD UP TO 900 A.D.

The Continental life and institutions of the Teutons (First Century B.C.).

Cæsar's account is second hand and gives a partial glimpse of a few tribes in a state of transition. They lived a tribal life, and the family tie was the basis of their social organisation. They were semi-nomadic, that is, they possessed a well-defined territory but had not any fixed dwelling place within it. They constantly moved about from one part of the land to another. They were largely pastoral depending on their flocks and herds. Whatever agriculture there was, was extensive in character. There was no private property in land. It was distributed every year afresh. There were annual migrations of tribes.

Cæsar's account.

Their economic and social life.

Their political organisation was tribal. The tribes had no political unity. There was a tribal council which determined on peace and war. In times of war they chose special officers to command them, but in times of peace they had no central magistrate. Each division possessed its own magistrates who administered justice and allotted lands annually. Magistrates were elected officers.

Their political organisation.

Their gods were the sun, the moon and the fire or the powers of nature. They had no regular priesthood.

Their religious life.

In Tacitus's Account (First Century A.C.) they had ceased to be nomadic and occupied fixed seats. Their village settlements were permanent. Their pursuit of agri-

Tacitus's account.

culture was general. The land belonged to the community. It was allotted annually to the freemen of the tribe. Each family however possessed its own homestead and the space of ground surrounding it.

Their economic life.

Their social organisation was based on the ideas of wealth, birth and office. Men of worth had more arable land and larger homesteads. Birth or status divided them into three classes—(a) nobles and the common freemen, (b) freedmen and (c) slaves. The first had equal political rights. The second had civil rights but not necessarily political rights. The third consisted of two types. The serf had a house of his own and held a portion of his lord's land to whom he paid in corn, cattle and clothing. He had no rights or justice against the lord, being the conquered occupant of the land. The slave proper had hardly any civil rights, having lost freedom either by gambling or in war.

Their social organisation.

There were three types of officers. Magistrates (principles) were elected in tribal assemblies and administered justice. They presided in the village (vicus) and district (pagus) courts and were helped by one hundred assessors. Leaders in war (duces) were elected by the assembly for their personal valour. Each district sent one hundred men to fight in the tribal host. Kings (reges) were elected from amongst the nobles. They were not found in all tribes. They had the highest honour but not the full power. They represented the unity of the tribe. They received a portion of the fines imposed in the courts.

Officials.

Every person belonged to his father's kindred from the point of view of social responsibility. Families and kindreds were his avengers and helpers as regards his life, limb and honour. They regulated the arrangements of the host. Families often performed the functions of the state. A part of the compensation or fine

went to the king and a part to the individual or his relations. Families looked after their own affairs and, above all, after the occupation and cultivation of the land allotted.

Their military organisation.

For war purposes there had developed a body of warlike companions (comitatus) who attached themselves to the chieftain (princeps) of their choice. He provided them with war horses, arms and entertainments. Their chief occupation was war. They fought for their chief, and their chief fought for victory. Their bond of loyalty was personal and not based on kinship. In time of peace they considered it an honour to wait on him. There was also the tribal host.

Their religious life.

They worshipped many gods representing the powers of nature, such as, Thunor, god of thunder, and Woden. They believed in the sanctity of certain plants and animals. They had priests but their power was not great. They made sacrifices and other offerings.

Their political organisation.

There were monarchic and republican tribes. Amongst both the central power was wielded by tribal assemblies. They were held at fixed times and were attended by all freemen. They discussed all the more important matters like war and peace, elected magistrates and leaders in war. The magistrates formed a small assembly to determine matters of minor importance and to prepare agenda to be placed before the tribal assembly. The tribal community (civitas or populus) was divided into pagi (districts) and vici (villages) which were governed by magistrates.

The Anglo-Saxon migration, Conquest and Settlement (449-577 A. D.).

The Anglo-Saxons in Britain.

The Angles, Saxons and Jutes came to help the Britons against the invasions of the Picts and Scots but remained as conquerors. They migrated

and settled in Britain in bands, after defeating and dispossessing the Keltic population. There are three main schools of historians about the nature of the conquest and of the social and political institutions established by them.

Three schools of thought about its character.

The Germanist or Teutonic school of Kemble, Freeman, Stubbs and Maitland advocates the theory of practical extermination of the Keltic population and the Keltic and Roman culture, and the theory of absolute Teutonic pre-dominance in the institutions established. They state that the Teutons retained their language, religion and customs, gave their own place-names and reproduced in all essential details the life of their society as they had lived it in their previous homes where they were untouched by any Roman influence.

The Germanist School.

The Romanist or Romano-Keltic school of Coote, Seebohn and Pearson advocates the theory of survival and amalgamation of the old Keltic and Roman culture. It believes in the piecemeal conquest of Britain by detached and isolated Anglo-Saxon bands and not in a wholesale conquest under the united command of a large host. There was no fellowship amongst the conquering tribes nor was there any common single chief. They warred amongst themselves. During this period of conquest and settlement the character of the old Anglo-Saxon institutions changed, because of their unavoidable mixture with the Britons and of their contact with Roman and Keltic institutions. The Romano-Keltic influence is seen (1) in the Saxon language where a number of common words relating to domestic employment and arts and to government are Keltic and Roman; (2) in the easy success of Christianity under Keltic forms and organisation; (3) in the continuation of the arts of weaving, carpentry and smithy; (4) in the identity of the Heptarchic shires and kingdoms with the early Roman territoria or Keltic tribal lands, and

The Romano-Keltic School.

also in the identity of the Saxon ealdorman with the Roman 'comes civitatis'; (5) in the English burh, of the Roman municipium; (6) in the English guilds, of the Roman Collegia; and above all (7) in the English manor, of the Roman villa. Roman law also influenced the basis of the Saxon family system and the laws of property.

The Modern School.

The school of Vinogradoff or modern critics gives an ecclectic theory. They do not seek a single origin for Anglo-Saxon institutions. They moderate the theory of absolute Teutonic predominance by taking into account the existence of a Romano-Keltic element. Vinogradoff agrees with the Germanists to this extent that the Anglo-Saxon conquest was something much more than merely the substitution of a few Teutonic masters over the heads of the Keltic conquered and their adoption of the Roman villa system. No doubt, the Anglo-Saxons learned from the Kelts some agrarian customs such as the open field system, and retained some elements of the Roman villa system out of necessity. But they did not learn the manorial system which developed later. In the semipastoral organisation of the Kelts there was no fixed and individual holding and no regular organisation of estates in which dependent labor was gathered round an economic centre. Thus there was neither private property nor servile labor nor manorial organisation amongst them. They had the roots of the village community and the open field system. The Romans had not changed this tribal organisation of the Kelts. They created a landed aristocracy in their villas and coloni by the side of free Keltic communities. The Anglo-Saxons utilised some of the remains of Roman civilisation and Keltic customs and arts. But they themselves had royal dynasties and noble families richly endowed with land and slaves. This fact tended to preserve the early great estates cultivated with the help of Keltic slaves and coloni. In the early Anglo-Saxon period there was the predominance of the small freehold and the existence of ceorls cultivating

their own hides as members of independent communities. It was the insecurity felt during constant warfare that led to the strengthening of royalty and of seignorial bonds and privileges under the system of commendation and the grants of sac and soc.

The Period of Heptarchy (577-613), Triarchy (613-830) and the Establishment of the Supremacy of Wessex (830-900).

The characteristics of the period.

The forces which affected the formation of Anglo-Saxon institutions were the constant internal wars and external invasions, the political ambition for supremacy and the spiritual ambition for conversion, and the needs of economic security and production. This period witnessed the growth of religious unity and organisation under the Roman Catholic church (664 A.D), of political unity and a Central Government under the House of Wessex and of a body of local institutions which looked after civil affairs. This replaced the early tribal organisation of society and polity and the variety of customs by a territorial organisation of classes and kingdoms and later on, of one kingdom and one law. The early Anglo-Saxon settlements fought against one another. The stronger absorbed the weaker and by a process of conquest and amalgamation through the stages of Heptarchy and Triarchy a united monarchy arose under the House of Wessex. In 827 Egbert of Wessex became the Bretwalda or supreme ruler whose authority was more or less accepted by other kings. The overlordship remained in his house and in 959 Edgar, the Peaceful, became the king of all England.

Their social organisation.

Their original social divisions were four, namely, (1) eorls and athelings whose wergild value was twelfhynde (1200 sh.), (2) eorls whose value was twyhynde (200 sh.), (3) leets or geneats who were serfs connected with geneatland (land cultivated by serfs) and dependent on the lord, and (4) thrals, theows

or slaves. 'Wer' or pecuniary estimation of man defined the value of each man's oath, his mund or protection and the amount of his fines. The amount of these 'wers' differed in different places and at different times.

The causes which brought about a change in these old social classes were the growth of the king's power along with his military companions and of the king's ownership of the conquered land. Constant warfare led to the rise of a nobility of service. *Thegns* were originally armed servants and then became nobles by serving the king in arms and by possessing each five hides of land. The gesiths were the free followers or war-companions bound by an oath to their lords like the comites. These thegns and gesiths became a new nobility of service more important than the old nobility of blood of eorls and athelings. War begat the king and the thegn.

By the time of Alfred (871—901) thegnship began to be connected with the land, and a new distinction arose among thegns. There were king's thegns who were corlright worthy and under the jurisdiction of the king alone, whose 'wer' was higher (twelf hynde), who had a higher heriot or military equipment, and who had a soken or jurisdiction of their own granted by the king. There were medial thegns who were sixdynde men, and there were even twyhynde thegns. We do not know whether thegnship became hereditary and territorial, that is, attached to the land, whether military service to the king was an incident attached to the land apart from the duty of serving in the fyrd incumbent on all, or whether it became merely a hereditary title.

Their economic organisation.

The community became largely agricultural. The land was cultivated under an open-field system. The community settled on it was organised into a 'tun' or township. There was an arable portion, a pasture portion called the commons, and a wood-portion

called the waste. The village freeholder was called the ceorl. A hide was originally the estate of a ceorl and his family. Later on it came to constitute a measure of arable land of 120 acres. The ceorl and his family cultivated it. Thegns were supposed to possess five hides or more. Under the stress of constant internal wars and Danish invasions of the ninth century this community was becoming a feudal community possessing some aspects of the manorial system of a lord's domain and a villein tenure. But during this period both these systems free and feudal prevailed.

Their political institutions. Laws.

Their early laws or dooms were personal and communal in character. They were customary and unwritten and were orally handed down. The conception of a common territorial law and a written law arose later. During the Heptarchic (577-613) period some laws were written down in the name of the king, such as the laws of Ethelbert of Kent (601-604) and of others. They were brief amending clauses dealing only with certain sides of the laws, more particularly with the penalties for important crimes and with the status of the clergy. These cases were new and were not provided for in the early customs. Behind this new written law there was a large body of customary law which was assumed to be known and binding. Without it the written dooms would be quite obscure and unintelligible. These supplementary laws were passed in the name of and by the authority of the king, but he was no uncontrolled lawmaker. Any important change in the customs of the people was made on the responsibility of the great men (witan) of the realm and was generally in relation to crimes and punishments, that is, matters of peace and order which were not provided for. The laws of the Ine of Wessex (cir. 690 A.D.) show in its preamble how and for what purpose they were enacted. It was to settle and establish just law and just kingly dooms so that none should pervert them. Kings also unified the various customs prevailing in their realm. It was Alfred

(871-901) who gathered the various local laws and customs, added to or altered them and gave them a common character by retaining the good and just with the counsel of the witan.

The king (cyning).

The king's power increased due to constant wars and needs of security and peace. He made some new laws for punishing crimes and for unifying the customs of the realm with the counsel and consent of his witan. As a conqueror his title and power were hereditary. He was surrounded and served by his thegns. He was assisted and advised in his work by the witan and bishops. He was the executive head and in his name peace was kept. A part of fines (*wite*) went to him as compensation to the ruler if any one slew a freeman. He exercised the prerogative of pardon in certain cases. He was the leader of the host and the father of his people.

The system of justice.

There was no state trial and punishment in cases of crime. It was only in cases of breach of peace (mund bryce) or murder that the king was entitled to take fine. *Wergild* was the pecuniary compensation given to kinsmen in proportion to the rank of the injured and to the offence committed. If it was not paid, the offender became a slave. *Bot* was the fine levied in a court. A part of it went to the ealdorman or lord and a part to the injured. In matters of procedure the system of compurgation (eid-hilfe, ath-fultum) or oath-helping was largely followed. "Clear by 120 hides," meant, procure the attestation of witnesses whose swearing power was so many hide's worth. Compurgators were witnesses to character.

Moots.

Moots (things, methels) were meetings. According to territorial divisions there were tun moots, burh moots, hundred moots and shire moots. They were all folk moots. Many of the local affairs were discussed and settled in these assemblies in accordance with local customs and

procedure. The moot served as a court of the local community. Witanagemot was a council of wisemen of the whole realm. The laws of Ethelbert of Kent were given "with the counsel and consent of witan."

Police system.

There was no state police. People were put in a tithing or union of ten freemen for mutual security. In some parts the township as a whole was held responsible. These units were collectively responsible for peace and detection of crime. They were in the nature of peace guilds (frith-guilds). Families and kinsmen (maegth) looked after the interests of their members and got wergild in cases of injury. In case a man was kinless then his guild brethren looked after his interests as a law of Alfred shows. Gradually under feudalisation lords became responsible for their men.

Citizen's obligations.

There was no regular system of taxation by the state. The people owed certain customary dues and services to the community and king. Three obligations (trinoda necessitas) were attached to land. Fyrd-fare was the obligation of military service for the defence of the country. Burhbot was that of repairing the defences of local fortresses and boroughs. Brigbot was the duty of repairing bridges. No estate either of thegn or ceorl was exempt from these duties.

Their religious life.

The early religion of Thor and Wodin was given up. Christianity came in two forms, one Keltic, the other Roman Catholic. In the early Christianity the anchoretic or eremitic conception of a perfect religious life was dominant. It meant a complete renunciation of the world with its domestic, social and political ties, and a life in the desert apart from all human companionship, spent in ceaseless vigils, prayers and meditation. He who followed this mode of life with the utmost rigour, who suppressed every natural desire of family and wealth, pleasure and reputation, and tamed his body by fasting, scourging and other austerities was

looked upon as a saint and was regarded with a peculiar homage and veneration. Later on, this conception of a solitary life was given up for living in communities where members subjected themselves to certain rules of discipline and to the supervision of superiors. In order to regulate this monastic life St. Benedict (480-543) formulated his famous Rule. This helped in the development of the monastic system in which in addition to the ascetic ideal, the virtue of humility and the abatement of bodily austerities prevailed.

Keltic Christianity.

Keltic Christianity developed on these Benedictine lines. A number of noble saints and hermits like St. David and St. Patrick, St. Columba and St. Aidan spread it amongst the Kelts. Its character was monastic. It was a congregation of hermits situated on some remote spot. Monks led the life of hermits, scholars and missionaries, and sometimes also of warriors. They did not care to change the tribal system of the Kelts. They did not organise any episcopal and parochial system of clergies on a territorial basis.

Roman Christianity.

The Roman Catholic Christianity came from Rome in 597, when Pope Gregory the Great sent a mission to Britain under St. Augustine. The Roman system was organised on a territorial basis. Every kingdom had its archbishop, every shire its bishop, and every village its clergyman. It took active part in making social laws, and to some extent in the secular affairs of the country, and thus kept contact with the state. It also differed in other minor matters from the Keltic Christianity.

In the seventh century matters of difference came to a head, and in the Synod of Whitby (664 A. C.) the Roman type triumphed. It gave England religious unity long before her political unity came. It organised England on a territorial basis under the episcopalian system. It created its own ecclesiastical synods or councils where a uniform religious law was developed. It also brought in the continental Christian learning of

the Fathers and the elements of Roman law and administration. Great Christian scholars like Theodore of Tarsus (669-690 A. C.) who was the Archbishop of Canterbury came and poured a new vigour into the life of the people by their learning and example. Theodore organised the English church definitely on a territorial basis, increased the number of bishoprics and parishes and enforced a uniform discipline.

Their comparative merits.

The Keltic church was purer, simpler and more careless of wealth than the Roman. The Roman was not exclusively or extremely religious. It had its secular side. It possessed secular power, property and aristocratic privileges. It took part in promoting national unity and prosperity. It shared in the feudal, social, economic and political life of the country. It also created a sense of authority of and obedience to a higher law and organisation amongst the warring tribes and turbulent nobles and their followers.

CHAPTER III

THE ANGLO-DANISH PERIOD (900-1066 A.C.).

The Anglo-Danish period can be divided into four stages: (1) The Anglicising of the Danelaw by the Saxon Kings (900-979), (2) Danish attacks and conquest (979-1016), (3) Danish Dynasty (1016-1042), and (4) Saxon Dynasty (1042-1066).

The character of the period.

The Northmen and Danes began to ravage Britain from about 790, and to settle in it from about 835. In 878 Alfred defeated the Danes, and the boundary of the Danelaw was fixed. Thus England came to be divided into two parts, Saxon and Danish. The Danish wars helped the growth of the royal power and the importance of thegns. The practice of commendation by ceorls for the sake of protection led to the growth of the Anglo-Saxon or pre-conquest feudalism. A number of fortified towns or burhs were built to withstand the Danes. The Danes also created a number of towns. By the time of Edgar the conquest of Dane-law and the consolidation of England under one rule was complete, and Edgar became the 'Ruler and Lord of the whole Isle of Albion' in 959. But the Danes again began their attacks from 979 and conquered it in 1013 under Sweyn. Canute became King in 1017, and though a Dane tried to rule as an English King. He chose English advisers, enforced English laws, and gave England peace. In 1042 the old Wessex dynasty was restored, and lasted till 1066.

The Social Organisation.

The names of the social classes remained the same but their character and status began to change, taking a feudal turn from the economic point of view and also partially from the political point of view. A ceorl who had fully five hides of his own land and

special duty in the King's Hall was held thegnright-worthy. If a thegn throve so that he served the King and on his summons rode amongst his household retinue, then he was eorlright-worthy. A ceorl who adopted commendation became gradually depressed to the position of a serf. There were many grades of serf tenure in this period. A geneat (villein) was the dependent cultivator of the soil. The land cultivated by him was known as 'geneat-land', and his lord's domain as 'thegn's inland'. Geneat-right differed in different estates. He generally paid land-rent (gafol) in cash or kind and rendered a number of dues or services according to the rule of the estate. There were other grades of villeins, such as cottars and geburs. The cottar-right and the gebur-right also differed according to the custom of the estate. Their dues and services were various. At the bottom was the thrall or unfree slave.

Feudalisation.

Towns gave rise to burgesses or a merchant class. Churches created the clergies or a priest class, and monasteries the monk and nun class. All these classes were used to be classified into bellatores (fighters), such as earls and thegns, oratores (praying class), such as clergies and monks, and laboratores (workers), such as ceorls and serfs.

All land was held either as *folkland, bocland* or *laenland*. Stubbs held that *folkland* was the land of the folk. It was the unoccupied public land belonging to the community as a whole. But Vinogradoff proved that folkland was land held by folklaw, that is, by a custom or unwritten title. It was the land occupied by the original settlers. The law of Edward the Elder (900-925) recognised folkland and bocland as the only kinds of land. Every head of a family held his hide or share in the land of the village community by right or custom of the folk to which he belonged. King's own estates were also his folkland.

The economic organisation.

Bocland was land held by a book or written title. The King as king had a claim to certain dues from all folk-lands. These were his property and he could dispose of them to others. He could also grant away actual estates from out of his folkland or out of waste-lands. But according to Maitland it seems likely that when he made grants he alienated not estates in his land but his rights of royal superiority over all folk-lands and the freemen living on it. These grants were made by charters or land-books. Thus bocland was merely a different kind of title. In fact the same plot of land could be both bocland and folkland. The right to land itself would be regulated by the custom of the particular folk, while the right to royal dues from the folk would be known under the terms of the book which granted them. King's dues were fiscal and justiciary. The fiscal rights consisted of the King's *feorm-fultum,* that is, his right of living at the expense of his subjects in the form of taking from a village one or two night's farm for himself and his retinue. The king might grant this right to a Church or to a thegn. It would become generally a kind of money contribution. Justiciary rights were those of *sac and soc* (rights and profits of jurisdiction), *toll* (duty) and *team* (right of compelling the person in whose hands stolen or lost property was found to name the person from whom he received it), *infangentheof* (jurisdiction over a thief caught within the limit of the estate to which the right belonged) and *outfangentheof* (right to pursue a thief outside his own jurisdiction and to bring him back to his court for trial).

Folkland could not be alienated or willed away from the rightful heir. Bocland could be. Bocland could be held by women. It reverted to the king if the grantee died heirless or neglected the conditions attaching to it. Thus bocland developed the feudal idea of the land being ultimately king's and that he granted it on condition of certain services being performed and that he resumed it in case of neglect of services or want of an heir to perform them. Folkland

was the absolute property of its owner who did not own services to the King as the condition upon which he owned his property. Kings made sometimes grants of land to churches and monasteries for the salvation of their souls or for the pardon of their sins, and some times to great thegns for services rendered by them. But in all these cases the land always remained subject to the trinoda necessitas and other dues to the King to be rendered by the inhabitants. *Laenland* was the land which the church very often used to loan generally for three successive lives either to a thegn for friendship, protection and services, or to cultivators in return for rent, services or a fixed sum. Laenland also showed some features of feudalism. The thegn held the land from the Church on condition of service and especially military service. After the third generation a relief was to be given if it was to be continued in the family. Then there developed rights of wardship and marriage, and thegns became subject to the rights of the private jurisdiction of the Church.

Thus some of the features of bocland and laenland tenure show us that feudal tendencies were growing from above. There were also causes which helped to develop them gradually from below. They were both economic and political. Amongst the economic causes the first was the levy of *Danegeld* which was originally a tribute to buy off Danes. It became later a permanent tax on land. Maitland stated that in each district a particular house which was the manor house was made responsibe for the geld of that district. But this theory is not correct as the unit of assessment was more probably the hundred. The Danegeld was a heavy tax and many ceorls were unable to return to the lord their share of the taxation which he had paid in advance on their behalf and so they became his dependents. The second was the *tithe* and *other dues* to be paid to the Church. They affected ceorls in the same way. The third was the pecuniary pressure exerted on ceorls by free booters, diseases,

Socio-economic feudalisation.

bad seasons and other debts and demands which also affected them similarly. Ceorls who cultivated the land of the Church or thegns in return for rent or services became gradually dependent serfs. Amongst the political causes were the growth of commendation, seignorial justice and a military class and the needs of local government. By *Commendation* was meant that (1) a man entrusted himself to a lord and became 'his man'. In return the lord gave him protection. It became necessary in days when there was no strong government. A law of Athelstan (cir. 930 A.C.) declared that every man must have a lord who should answer for his appearance in a court of law. The life of a man who had commended himself to a lord was protected by a special *bot* in addition to the wergild. If he got into trouble it was desirable to have a lord who would appear to protect him in a court of law. Though commendation need not have necessarily involved land, it was usual for a man 'to take his land with him,' because he really wanted the protection of his title to land against a powerful neighbour or invader. (2) *Seignorial justice* grew up when kings began to make grants of sac and soc to the church and to great thegns. When profits of juristiction (wite) began to go to them, the rights of jurisdiction or holding court naturally followed. Commendation itself fostered seignorial justice, because the lord would require his men to attend his court and when he ceased to attend the local communal courts they would cease to recognise his legal right to his property. In the eyes of law his lord would be regarded as the rightful owner, and his status would become similar to that of a serf.

(3) The rise of a special *military class* or thegns was due to constant wars and especially to Danish invasions and conquests. They were professional soldiers and were better skilled and equipped than the members of the fyrd who could not give their whole time for fighting. In general they each possessed at least five hides of land which would afford them requisite leisure

and proper military equipment to fulfil their special obligations to the king. The result was that a division began to show itself between these military thegns and laboring ceorls. The latter were mainly engaged in cultivation. They lost gradually their warlike character and thus also their best title to the privileges of a freeman. The position of the tiller of the soil got slowly degraded. Since the thegn did all the fighting for the community, the community came to support him by payment of rent and services. His five hides were cultivated for him by the ceorls or serfs in the neighbourhood. He gradually became their lord. On this military class also fell some work of *local government* when the central government found it impossible to make its will felt in distant parts of the country. Thegns became its natural representatives in their own localities, and some powers were delegated to them. They thus came to rule their serf-dependents and peasant-neighbours in matters of justice and police, and their estates gradually became units for the purposes of police and jurisdiction.

Their political organisation.

During this period English political institutions acquired a new character as a result of Danish invasions and settlements and of the political unity of the country. A tendency to select and codify various customs and laws on a uniform basis grew up.

Laws.

From the time of Alfred to that of Canute fresh laws were sanctioned in almost every reign with the help of bishops and witan. The nature of these laws was mostly to extend the control of government and to combat the tendencies towards disintegration and anarchy. Crimes relating to property such as cattle-lifting, the establishment and supervision of peace-guilds organised in tithings and hundreds for order and protection, the offences of treason and the contempt of royal commands, and the duties and functions of royal officers are generally dealt with. Canute in his proclamation of 1020 assured his English subjects of good government,

by maintaining god's rights, royal authority and the weal of the people according to right secular law. But as yet the idea of State-made law and the State court had not arisen. The tribal idea of wergild and the church idea of penance continued. The conception of treason to the king (oferhyrnes) or to lord was personal. The idea of personal loyalty and services to the king or lord was held. There was no idea of patriotism or state loyalty.

Political Feudalisation.

The old tribal institutions were being replaced by feudalised institutions. Political upheavals and insecurity led to the strengthening of royal power and to the rise of military classes. The King and his thegns formed this feudal aristocracy which alone could give protection and a feeling of security, and maintain peace and order. Tribal peace had broken down in the sphere of justice and police. New feudal organisations could alone award punishments and realise fines. Kings had to depend on lords' help and strong hand for performing many functions of local government as the old communal organisations got weakened. Kings granted them fiscal, police, and justiciary rights as their agents in local administration. These seignorial rights existed side by side with the rights and functions of old communal courts and gradually encroached upon them. Large revenues in the shape of fines passed to these lords. Thus by the side of King's peace, Kings power, King's law and jurisdiction, and of folk-peace, folk-law and folk-courts, there arose the private jurisdictions and powers of earls and bishops.

This Anglo-Danish feudalism was largely personal and not territorial. Thegns gave service on account of their personal obligation and not an account of the lands they held. There was no inevitable connection between land-holding and public service. Political service was attached to person and not to land. Old communal institutions, duties and functions still

remained. Saxon and Danish rulers maintained English conceptions, laws and customs.

Citizens' obligations.

A citizen's duties were sometimes summed up by the phrase 'scot and lot' which meant an individual's communal and personal dues. There was no regular system of direct taxation. Citizens gave services or aids on certain occasions and helped in certain public functions. Their services were summed up in the trinoda necessitas. They owed loyalty to the King and the laws of the land. It was considered a crime to show any contempt towards royal command and it was punished as oferhyrnes. The king, however, began to look at the affairs of the realm not from the tribal point of view but from the point of view of the security and welfare of the territory and of those who were settled on it and gave their allegiance to him, be they Saxons or Danes, conquerors or conquered. This helped in creating a system of common law and administration and common political interests amongst the inhabitants. Canute's rule showed this.

Central Government.

The king was the very centre and core of society. All authority emanated from him. Most of the people were semi-free. Only the nobility was properly free because of their official relation to the king. King's power increased due to continual wars and conquests of other kingdoms. Members of the royal house became ealdormen or governors of shires or kingdoms conquered. The earliest legislation showed that the king enjoyed a more important status than the rest of the community and had his special pleas reserved. In the laws of Ethelbert

The King.

His position.

the king's *mund bryce* or frith bot (violation of his special protection) was more than four times that of an earl and eight times that of a ceorl. Alfred made treason against the king a crime punishable by death. Obedience to the king was declared a religious duty. The crime of *oferhyrnes* (contempt of royal command)

was recognised. The church and the Roman law stengthened king's personal dignity by their theories of royal supremacy. The church also gave her support to kings because they were her benefactors and gave her settled peace in the country. After the conquest and amalgamation of the Danelaw the English kings, instead of being leaders of Anglo-Saxon tribes, became lords of the territory and the people settled in it. Both the English and the Danes were equally their subjects. *King's peace* came to prevail over the land. *Peace* meant protection. There was the *folk-peace*, that is, the general protection afforded by the community to every one of its members. This was decaying. There was also the peace of the hundred and of the lord in their own localities. From the beginning the king was the protector and guardian of the people's peace. Therefore he shared in the fines (wite) for the breach of the national peace. He could restore an outlaw to his place in society. But the king was not as yet the fountain of justice because there were other 'peaces' in addition to his own. The king had his own distinct peace which meant a special guarantee for those under his own protection. This king's peace in course of time superseded and absorbed all other peaces, and he became the source of all justice and protection. This was due to a change in his relation to his people. Instead of being a leader of his people he became their lord. The relation instead of being tribal became territorial. He was not merely a guardian but a protector of all settled in the territory under his rule. They came under his special peace. The government officers became his officers and the executors of his peace. Offences against the law became offences against royal authority. This change was visible from the time of Alfred. The King became supreme judge over all persons and cases. All were in his '*mund*' or '*grith*' which was the special *frith* or peace granted by the King. In Canute's secular dooms we find the King's rights or special

His peace.

His feudalisation.

pleas in Wessex stated to be mundbryce, hamsocne, forsteal (highway robberies) and fyrdwite, and in Danelaw, fihtwite, fyrdwite, grithbryce and hamsocne (sheltering criminals from justice). These were the criminal offences reserved for the king. Alfred and Athelstan sent 'missi' as supervisors of justice. Edgar and Canute made judicial circuits.

His succession.

The monarchy was hereditary but not primogenitural, that is, it was restricted to a single family, but within that family it went to the best member who possessed martial prowess. Times required such leaders and Kings. Thus Alfred succeeded instead of the son of his predecessor. From Alfred to Canute succession followed primogeniture. 'Election', if any, by the witan could only have been a formal approval.

His revenues.

Revenues of the King came primarily from his large estates. The royal domain bore most of the expenses of Government. He had a right to feorm-fultum from his tenants. He shared in the fines and forfeitures imposed in local courts in certain cases of crimes. He had rights of toll over harbors and roads. He got profits of coinage. He had rights of shipwreck. He charged fees for his special peace. He got payment and services in kind in the shape of trinoda necessitas. He had the prerogative of purveyance while touring in the country. From the time of Canute at least he had rights over forests.

Limitations on royal power.

In theory there were no limitation on King's power but in practice there were some. The Witan which was a permanent advisory body acquired power when the King was weak or a minor. The local courts did justice according to the law of the land. The King had no unrestrained authority over them or in making laws. Difficulties of local government from the centre necessitated a lot of power being left in the hands of or granted to local officers, courts and lords. Invasions made him look for support to the people.

Papal authority acted as a great restraining influence on royal actions and ambitions.

The Witan. Its composition.

According to Freeman the Witan was democratic in theory but aristocratic in practice. According to Stubbs it was aristocratic both in theory and practice. Whatever might have been its theoretical constitution it was almost always an aristocratic gathering, in which the churchmen directed the debates. It ordinarily consisted of an ecclesiastical element of archbishops, bishops and sometimes abbots; and of a lay element of the members of the royal family together with ealdormen and thegns. It had no representative character. The king called whomsoever it pleased him to summon.

Its Powers.

Kemble, Stubbs and others credited the Witan with great constitutional powers and believed it to be a real check upon the King. It was supposed to possess the right of electing and deposing him. It was however merely an advisory body. It had no definite organisation, or rules about meetings and choice of members. It had no records and no constitutional way of enforcing its wishes. Kings were not elected. They succeeded hereditarily. It merely approved of the natural successor. The expression 'geceosen to cyning' most probably meant that the thegns of the late King "accepted to lord" the new king, that is, approved of his succession, or merely acknowledged their new lord. As regards deposition it was generally accomplished in some violent manner as the result of a rebellion or conspiracy. Witan meant the wise men of the king. He used to appoint some from amongst them to try cases. The king often asked their advice as councillors on matters of administration such as laws, justice, appointments, taxes etc. But this consultation was not the rule and this does not also mean that there was a regular council called Witanagemot which had a defined constitution, that is, composition, powers, times and places of meeting or did

formal business. It was not an independent representative body of the whole people possessing vote and consenting to or checking the acts of the king. He dismissed it at his pleasure. It had no constitutional guarantee.

The Local Government.

England came to be divided into shires, hundreds, tuns and burhs. The word 'shire' or 'scir' meant a share or subdivision of a larger whole. It was the largest territorial subdivison of the kingdom for administrative purposes. Its affairs were regulated and looked after by the shire-moot (folkmoot), the ealdorman and the sheriff. The shire-moot was the highest local folk-court. The later Leges Henrici Primi state that it contained the bishop, the ealdorman, the sheriff and other local officials together with all landholders. A lord could be represented by his steward. If the lord and steward were away, then the reeve, priest and four men from the township were to attend and to answer for all who had not been summoned by name to the court. They came under special circumstances. It was not a gathering of all the people as Stubbs believed, nor was it a representative body where reeve and four men from each village attended in a representative capacity.

The Shire.

The Shiremoot.

Its composition.

It was not generally a court of first instance. It was a court of appeal doing justice in cases where the hundred court failed to do it. It frequently attested private transactions, such as wills.

Its powers.

A law of Edgar and of Canute says that 'the shire should meet twice yearly.'' These were solemn half yearly meetings when every one entitled to be present attended. In addition, there seem to have been monthly meetings attended only by a smaller body of men. There were present there the bishop and the ealdorman who expounded the law of God and the

secular law, and the sheriff who regulated the procedure.

Ealdorman. His duties.

The ealdorman was not elected by the shire but was appointed by the king and was a king's officer. He was often a member of the conquered royal house or later a kinsmen of the ruling house. Though the consent of the king was always necessary for a new ealdorman, yet as a rule his position was an hereditary one. Ealdormen ruled a complex number of shires. Their duties were both military and civil. They commanded the shire-levies. They presided over the shire-court personally or by deputy. They were responsible for the execution of the law and justice against wrong-doers. They received payments in kind and the third-penny, that is, a third part of the fines in Danish shires. A high compensation was due to him under the head of mundbryce, burgbryce and manbot (murder of a dependent). Thus they were the chief local officers. In matters of central government they formed the weighty element in the Witan.

Feudalisation of his office.

They tended to become hereditary, had large private estates and jurisdiction. Later the independence of great ealdormen increased. Edgar's reign marked the tendency towards disruption of England into some six feudal earldoms. They quarrelled from 975 to 1066, because the king was unable to control the whole united England after 975. Then came the cleavage between the north and the south. Canute created in 1017 four earldoms. He made frequent grants of private jurisdiction and raised the social position of the earls in the nobility of service. Thus the office of ealdormen and later earls became feudalised in dignity and powers. There was no other link between the central and local government.

The Sheriff.

According to Kemble and Stubbs the shire was an early Anglo-Saxon institution, and the sheriff was its elected officer from the beginning. They based their view on

the word 'scirman' occuring in the laws of Ine (690 A. D). But Chadwick and Liebermann have shown this view to be incorrect. Shire was not a primitive Anglo-Saxon institution nor an early kingdom mediatised. They were territorial sub-divisions of a kingdom. In early times ealdormen were heads of shires. They were the chief judicial officials. The 'scirman' corresponded to an ealdorman, and the shire had no sheriff. The new view according to Liebermann is that the office of the sheriff did not branch off from the rest of the reeves until the tenth century. The king's reeve was the prototype of the sheriff but not the sheriff himself. When the king's reeve began to administer a shire, then he became a sheriff (scirgerefa or scirreeve). This became necessary when owing to the formation of great earldoms there came to be only one ealdorman for two or three shires. This grouping of shires in the 10th century under the rule of one individual ealdorman made it impossible for him to attend in person to the duties of his office in several shires. He required a deputy and the officer in the shire next in rank had long been a king's reeve. Thus the precursor of the sheriff was the king's reeve. The sheriff was appointed and removable by the king. The perquisites of the office, a part from grants of land and other advantages due to the personal favour of the king, included the privilege of farming his estates and some other sources of his income.

His origin.

His judicial and military powers were derived from the authority of the ealdorman. The sheriff represented him and presided over the shire moot and regulated its procedure. He had also similar duties in hundred moots. His military duties were confined to his own shire matters. He took command against incursions and was the leader of the local militia. He also had powers derived from his reeveship. He proclaimed king's peace and commands, and had the power to seize criminals. As a fiscal agent of the king the adminis-

His duties.

tration of royal rents, dues, services, judicial fines and forfeitures were in his hand. He looked after the ferm of the royal domain. He enforced the levy of Danegeld on all the landholders of the shire. He was thus the officer of the ealdorman or earl, the king and the country.

The Hundred moot.

Stubbs connected the origin of 'hundred' with the pagus of Tacitus which according to the old view sent a hundred assessors to the court of the princeps and a hundred warriors to the host. The hundred in England represented the primitive settlements of each hundred warriors of the host which invaded Britain. The new view is expressed by Chadwick. The first reference to the hundred is in Edgar's Code (959—975 A.C.). Chadwick however shows from a document called 'Tribal Hidage' which was a kind of land survey that the hundred was a territorial subdivision from much earlier times than the reign of Edgar. Each tribe was allotted a certain number of hides which was always a multiple of hundred. The hundred also existed as a unit of administration before Edgar. There is a law of Edward (cir. 920 A.C.) which says "the reeve shall hold a gemot once a month." The ordinance of Edgar also says "the hundred shall meet once a month." Therefore it seems natural to assume that the same court—the hundred court—is meant in both cases.

The origin of Hundred.

The hundred court was the ordinary court of justice of first instance. A person had to bring his case thrice to it and then he went to the shire court if he did not get justice. Its chief officer was called the *hundredman* or hundredes-ealdor. From the ordinance of Edgar we find that his duties were to pursue and to punish thieves. The fine was to be divided half and half between the hundred and the lord who was to take possession of the thieves. In the hundred court folk-right or customary law of land was pronounced in

Its functions.

every suit. *Bot* (compensation to the injured) was fixed upon the *wer* of the man. The bishop and the ealdorman were to be present in the court to expound the law of God and the secular law. Every man was subject to its jurisdiction.

Tunmoot and burh-moot.

The folkmoot held by the king's gereffa or reeve was a subdivision of a shire laid out originally about a royal *tun* (village) or *burh* which was an important administrative centre. The king's reeve as a judicial and administrative official presided over these tunmoots and burhmoots. He held according to a law of 920 a gemot always once in four weeks, enforced folkright, saw that every suit had an end and a term when it should be concluded. He dealt with both civil and criminal cases, and gave judgment according to the testimony of the witnesses produced. He was subordinate to the ealdorman in capacity. He had under-gereffas to carry out the directions of the moot. He was the leader of the men of the division in pursuit of thieves. He as well as the ealdorman was the guardian of the peace. He proclaimed the *grith* in the gemot and placed men under the official pledge to observe the peace. He thus maintained the Anglo-Saxon system of suretyship or *borh*. He brought *tyhtbysig* men (persons of bad reputation) under suretyship. If he neglected this duty he was fined heavily. He attested officially various private transactions in the folkmoot. He was a fiscal officer of the king, collected royal dues, enforced royal services and other rights such as feorm fultum or purveyance (food rent). He collected court compositions and took possession of felon's chattels, and carried out king's commands or work. He aided the bishops to collect tithes, alms, church-scot and soul-scot. Thus the reeves were functionaries who were entrusted with the details of the king's administration and who enforced law and order, administered royal estates, collected tolls and dues, punished criminals and possibly per-

King's reeve. His duties.

formed military duties. Later they came to be attached to hundreds and shires for the same functions. A law of Ethelred (918-1016) shows that they were the leading figures in the gemots of the wapentake (hundred). A reeve was to accompany the twelve senior thegns in their criminal work. Burhgemots were held thrice a year. Tuns and burhs were centres or units of administration and criminal jurisdiction where dealings about public dues and services took place.

The Police system.

The ways in which the presence of an offender was secured in a court were : firstly, by *an oath* imposed for the maintenance of peace. Canute enacted that everyone above the age of 12 was to take an oath that he would not be a thief nor cognisant of theft. Originally the kindred was responsible, but the tie and the system grew weaker. Then the idea and the system arose that every man should have a lord to answer for him to be his surety (borh). Alfred enacted that all men who were not themselves lords should place themselves under lords. Secondly, the *system of tithing* was introduced for lordless men. A law of Athelstan (930 A.C.) ordained that "respecting those lordless men whom no law can be got, that the kindred be commanded that they domicile him to folkright, and find him a lord in the folkmote." When it was not possible, then a system of groups of ten was to be introduced. Each one of the group was responsible for the other members. The chief or tithingman amongst them was to direct the other nine in each of the duties ordained by law. The *tithing* was also called *Hynden,* frith-borh or frithgild. Hynden man was the head over *ten hyndens*. The tithing was an association of ten men for mutual security. They were bound to produce in a court of justice any member who was summoned to it. In parts of England tithing was not a group of men but a village. All its inhabitants were held responsible for one another. Excepting lords or large landholders,

Tithing. Its organisation and working.

all males above 12 had to be in a tithing. In some places free men were in a tithing and in others, unfree. They were brought into a tithing by lords and were fined if they failed in their duty.

Watch and ward and hue and cry were the ways by which fugitives from justice were detected. Edgar's ordinance of the hundred laid down regulations for the pursuit of a criminal by the entire population from one hundred to another.

Judicial procedure.

In the judicial procedure there was no trial based on questions of fact. There was trial by proof. There was proof by oath or compurgation. A man was allowed to clear himself by his own oath and by the oaths of other people, called *compurgators* or oath helpers. These men were not witnesses of fact. They swore about the character of the man or to the justice of the claim or defence as a whole. The number of compurgators varied with the man's status. One of the laws says "clear by 120 hides," that is, procure witnesses whose swearing power was so many hide's worth. If a man could not clear himself by the oath, he went to *ordeal* which was conducted by the church and consisted of cold or consecrated water or fire.

Punishments.

Outlawry was a punishment which declared a criminal to be outside the law of the land. Nobody could protect him. Any one might slay him and go unpunished. The king alone could pardon him.

Bloodfeud was abolished. Alfred made it unlawful to begin a feud till an attempt was made to exact wergilds. Edmund (943 A.C.) resolved to suppress it altogether. Feud was not to be prosecuted against the kindred unless they harbored him.

Wergild (man-price) denoted a system by which the offender was allowed to atone by payment of compensation to the injured. *Bot* was fine to the injured, and *wite* went to the king as compensation to the ruler. An elaborate scheme of pecuniary com-

pensations was evolved. Alfred made *'treason' botless*. The amount of fine varied according to the status of the injured and the nature of the offence.

The only *imprisonment* prevalent was temporary detention to secure trial. Death was inflicted for some crimes such as treason. Sometimes mutilation was also inflicted.

Tendency towards centralisation.

In the matter of centralisation we see a beginning of the development of a central army, a central treasury and a central chancery in the eleventh century. Ethelred II's reign (978—1016) shows the employment of a professional mercenary army and navy to meet Danish invasions. It developed under Canute and lasted till 1066. Canute's standing body-guard of Danish soldiers (thingemanni) consisted of huscarls attached to the household, and buzecarls serving as garrisons. These troops were paid with the Danegeld money and disappeared in 1066.

With the levy of Danegeld (991—1064 A.C.) arose a national land-tax. Normally it was two shillings on each assessed hide. It was a heavy tax. It was paid by hundreds and guilds. A lump sum was attached to them and then was divided amongst the dwellers. It led to the development of a central treasury where to receive and to pay it out, and where books of account and means of testing and weighing money were kept. Treasury is pre-conquest. Canute continued these institutions.

Under Canute a new chapel department received a new work of looking after the services of king's private chapel and also of managing the treasury. Cancellarius was the king's chaplain. His work was to draft charters, to draw up the writs, and to keep the great seal. The Chancery which became a regular legal office with legal forms developed out of the royal household. The Chancellor being the king's chaplain was the head of the royal clerks who sat behind a cancella or screen, to issue documents.

We have already noticed the development of a common body of laws or dooms for all created by kings.

The religious life and organisation.

The church became more closely united to the king who began to protect her rights more zealously. She became more worldly. Archbishops and bishops were statesmen and warriors possessing rich livings or benefices. It was the policy of Dunstan (946—988 A.C.) who was then the chief minister to strengthen and purify the church.

Dunstan's reforms.

In this work of religious revival he wanted to consolidate both the royal and the religious power from one centre, to revive the influence of monasteries by making them accept the rule of St. Benedict and do the work of teaching, to enforce the celebacy of the clergy as the best check upon the growth of hereditary claims and to draw closer the relations of England and Europe. He however did not succeed fully because of the opposition he met.

Church and State.

The church shared in the work of secular administration. The bishop sat along with the ealdorman in the local courts of justice to expound the law of god as well as the secular law. In the Witan also he took a leading part. The ecclesiastical legislation of the Witan bound the church.

Her Councils.

In their synods or councils national, provincial or local the clergies enacted canons or religious laws. Kings did not lay any claim to make or interprete them. Clergies were either *regular*, that is, those monks and friars who were bound to observe a definite religious rule in addition to their ordination vows; or *secular*, that is, those parochial clergies who were bound only by their ordination vows. The parochial clergies and bishops were regularly paid a tithe and church-scot as minor offerings. They received large gifts of land or revenue for doing spiritual service for the salvation of soul from kings and lords and thus became rich. The episcopal organisation had two

Episcopal organisation.

archbishoprics one at Canterbury and the other at York, a number of bishoprics (one bishop for every diocese) and a large number of clergies (one clergy for every parish). Her chief source of revenue was from

Her revenue.

bocland grants in which she got the rights of feorm and of private jurisdiction. The church-scot was a general tax due from all land. The Soul-scot was mortuary dues. Candle-scot was the duty of maintaining candles at altars. The tithe was one-tenth of a man's produce from land. The Peter's pence went to Rome. Thus there was a system of direct taxation early developed in church matters.

The church had her own courts where spiritual offences of the clergy were dealt with. The bishop sat

Her Courts.

in the shire and hundred courts to deal with the criminous offences of the clergy and with the morals of the laity. As a landlord he had often rights of seignorial justice.

Thus the Anglo-Saxon church was united with the state in all matters, and shared in its powers and

Her influence on state.

functions. There is no clear distinction between the powers of both. She became a pattern for the unity of the state in her national synod, her diocesan system, and her systems of uniform law and taxation. She helped in the increase of royal power by introducing maxims of absolutism from the Roman law and of divine right of kings. This close connection secularised the church and affected the spiritual life of bishops who became immersed in secular affairs. In the 11th century preferments in the church were openly sold. S.R. Malik.

The weakness of the central government and the independence of great earls and their quarrels from

End of the dynasty.

975 to 1066 destroyed the Saxon monarchy. There grew up a cleavage between the north and the south. The Central government lost its power of control and protection because of the feudal disruptive tendencies which had gradually increased.

CHAPTER IV

THE NORMAN PERIOD (1066-1154).

The Norman monarchs gave England a strong central government and stopped the old disruptive tendencies. They were akin to the English but were better educated and were gifted with the powers of organisation and adaptation. They preserved what was good in the English institutions, brought England into contact with the continental life and culture, and by strengthening the royal authority helped in the formation of a strong and united state.

William I.

William I (1066—1087) was a strong and determined man. He established a strong central authority, preserved English laws and local institutions and made himself the ruler of both the state and the church. He claimed a legal title of the throne as the successor of the Confessor and asserted it against Harold by force of arms. The conquest was gradual and took five years (1066-1071) to be completed, during which period he confiscated the lands of Anglo-Saxon earls and distributed them amongst his followers. This led to the prevalence of scattered estates amongst his followers and not to the growth of large compact feudal estates. The estates of the Anglo-Saxon earls had themselves been scattered. During 1071—1087 he fully established the feudal kingship in England on a political basis. He continued the Anglo-Saxon economic feudalism. The pre-conquest feudalism though developed economically was not fully political. The old local customs and tribal privileges of the folk had continued. The ownership of the land was not necessarily connected with the incidents of public ser-

Character of the Conquest.

vice. The pre-conquest feudalism was unsystematised. There were no regular thegns' courts or feudal justice.

Its results.

The general result of the conquest was that the local institutions were kept, but a new vigour was poured into them. The Witan gave place to the Concilium or Curia Regis, an assembly of king's officers and tenants-in-chief. The old centrifugal tendencies were checked. The Conqueror summoned and compelled all land-holders to take an oath of allegiance directly to him as the supreme landlord at Salisbury in 1086. He developed a system of centralised feudalism, that is, a system of land-tenure and government in which the landholders were public officers.

Royal supremacy.

His royal position was strengthened as he was both the personal protector of all his subjects as well as the supreme landlord. The whole tendency after the conquest was towards concentration of all power and justice in the hands of the Crown. "All was in him in the beginning and all comes from him." All other power-holders derived their power from him. The king came to be substituted for the folk. The independent power of the earls and ealdormen was swept away. The institutions of the country gradually changed towards the feudal type. For the time being the native English lost their social and political power.

The lawyers like Blackstone view the Norman conquest as an innovation in the shape of a feudal system based on royal supremacy. Palgrave views it as a continuity and development of the later Saxon feudal tendencies. Freeman and Stubbs view it partly as an innovation and partly as a continuation. Round says that the conqueror introduced a new brand of feudalism. On the whole the modern view is that the forms of the past were retained but the spirit was to centralise everything in the king. The Norman conquest brought to England monarchic despotism based on administrative centralisation.

The *feudal system* was an organisation of society and polity based on land-tenure. It developed a socio-political and a socio-economic aspect. In *political feudalism* political functions, that is, duties of citizenships and powers of government, were performed as a part of the obligations attached to the holding of land in vassalage from the king. A person served in the army not because he was a citizen of the state but because he had agreed as a vassal by a feudal contract to do so as a part of the services he was to pay for the land. The whole administration, judicial organisation, councils and courts, army and revenue were organised on this basis of a feudal contract. If a person ceased to hold land, he ceased to render any of these services. Landless men had no political status, no public rights and duties. Land also gave economic security and the social status of a freeman. Everything was thought in terms of land and not in terms of the community or the individual. Norman feudalism became strictly territorial.

The feudal system.

Political feudalism.

The king granted land to barons or tenants-in-chief (also called vassals) in return chiefly for military service, for suit to the king's court, and for other feudal dues and duties. These in turn granted pieces of land to mesne or sub-tenants (also called sub-vassals) in return for similar obligations. The lowest grantees and holders of land were called knights. This process was called sub-infeudation. The knight who held the knight's fee or estate had to render military service to his lord for forty-days in the year when summoned. These feudal relations of lords and vassals were fixed and heritable and based on a feudal contract. In this system the king retained a certain portion of land as his royal domain, the revenues of which were his chief income. His household and administrative expenses were paid out of them. The rest of the land was distributed amongst his tenants-in-chief who held directly

Its organisation.

from him. They supplied him with a number of knights according to the extent of their holdings. Similarly they in turn retained certain portions as lord's domain and then granted the remaining to mesne tenants in return for suit and service, and so on down the scale. The land tenure was however not merely in lieu of knight service. There were other tenures. The *free tenures* included tenures by knight service, socage, frankalmoign and searjeanty. The *servile tenure* was tenure by villein service under the economic organisation of the manor.

Tenure by Knight service.

The tenure by *knight service* meant the obligation of supplying one fully armed knight in lieu of land. The length of service was generally 40 days in a year. The place of service was not fixed. The greater part of England was held by knight's service, one knight's fee (feodum) which was the piece of land of a single knight was responsible for one knight. The extent of the knight's fee, according to *Round,* was not fixed. The number of knights required from an estate was fixed arbitrarily by William I irrespective of its size and this number was a multiple of five or ten. The Norman knight did not develop from the Anglo-Saxon thegn. According to *Vinogradoff* the extent was determined by acreage. In some cases it was five hides, in others where land was of less value the number varied from seven to forty-eight. Thus the land of the knight was a variable quantity according to the quality of the land. The old view of Stubbs was that one knight was demanded from each group of five hides of land worth twenty pounds in valuation.

Feudal dues.

There were a number of feudal dues or incidents attached to this tenure. Firstly, a vassal did *homage* to his lord, that is, he promised to become his man (homo) and to perform certain services. In return the lord promised protection of his person and property. Secondly, a

vassal took an oath of *fealty* or faithfulness to his lord. William I however made all vassals and subvassals to take an oath of fealty direct to him, so that a subvassal could not fight for his lord against the king. Thirdly, a vassal rendered *military service*. *Fourthly*, he had to pay the *suit* to the court, that is, to attend the lord's court. Fifthly, he had to pay reasonable *feudal* aids (auxilia) in time of need, such as to ransom the lord, to pay for the knighting of the lord's eldest son, and for the dowry of the eldest daughter. Sixthly, he had to pay *reliefs* (relevium) or succession dues. Fiefs were not regarded as hereditary. The king was the supreme landowner. They reverted to the grantor at the death of the grantee. The heir of the grantee had to bring back the estate from the lord. The money paid was called a relief. Seventhly, there was a right of *escheat*. If a tenant had no heir or if he was guilty of felony or treason, the land reverted to the lord. Eighthly, there was a right of *wardship* when the heir was a minor. It was the right of the lord to look after the estate and its income, and the minor and his training in arms. Ninthly, there was the right of *marriage*. If the heir happened to be a female, military service was to be performed by her husband. Therefore it was in the interests of the lord to see that she did not marry his enemy. He had the right to veto such a marriage. Therefore his consent had to be brought and he received money from the suitor. Tenthly, when the minor came of age, the *livery of seisin* was paid instead of the ordinary relief. It used to be half the profits of that year. Lastly, *primer seisin* was paid in case of an heir who could not lawfully obtain possession until he had proved his tittle and given the homage and relief.

Socage Tenure.

Socage tenure was based on fixed and determinate services which usually took the form of rent. It was a freehold land. Pollock and Maitland called it as "the great residuary tenure." The incidents of the socage tenure were the same as in the case of the knight's

tenure except homage, military service and wardship. Sokemen were not bound to week-work as villeins were. But like the villeins they could not sell their lands nor leave the manor without lord's consent. They were members of the village community joining in the system of common cultivation but with less burdensome services and more honourable duties.

Frankalmaign Tenure.

Frankalmoign (free alms) tenure related to land held by the church in return for spiritual service such as mass, alms to the poor, prayers. It was generally free of any secular service. The land was subject to ecclesiastical courts.

Serjeanty Tenure.

Serjeanty tenure was a service tenure. Tenants were servants such as cooks, stewards, chamberlains, falconers. It was of two kinds. *Grand Serjeanty* tenures meant lands held of the king in connection with the great household offices, and *Petty Serjeanty* tenures meant those held for lesser services.

Villein Tenure.

The *villein* tenure was an unfree tenure. The villein had no status in king's courts. His services were of an economic nature, and were indefinite, uncertain and not fixed. They were dependent on the lord's will. Villeinage was not merely a land-tenure but also a personal status. It indicated an unfree holding and an unfree man. The villein had generally no rights personal or proprietary against his lord. But in relation to all others he was a freeman, and had a legal protection for his person and property. He had to serve in the national militia, to pay taxes and to perform other public duties.

Socio-economic feudalism.

Manorial system.

Socio-economic feudalism implied the organisation of production of land on the basis of a *manorial system*, and the social and economic relations of tenants and small cultivators to great landholders. The manorial system

was based on the system of villein-tenure. In the 11th century and long afterwards the whole country outside the larger towns was divided into manors. In each of them one person called the lord possessed certain valuable rights over all the other inhabitants. These rights were political and economic. Normally one manor consisted of one village and the lands surrounding it. Within the manor there were sokemen and villeins. Sokemen (liber homo or free man) were tied by jurisdictional bond to the lord and his court. Villeins (serfs) were tied to the lord by an economic bond of labor service in addition to the jurisdictional bond. The manorial land consisted of lord's own land called *domain* or *inland*, and the tenant's land in the hands of sokemen and villeins. The lord cultivated his domain land with the help of villeins and devoted his time and energy in warfare and in protecting his own land and rights and those freemen who had sought his protection in return for certain fixed services and payments. Gradually their status and land were being assimilated to that of villeins whose services and payments were not fixed. Ordinarily a villein held a virgate (30 acres) or half a virgate of land which consisted of scattered strips in the three fields of arable land with appertenant and proportionate rights to meadow and pasture. He did week-work for two or three days in a week throughout the year and additional work for a few days known as boon-days at ploughing and harvest time. Besides this there were some quarterly payments in money and some dues in kind and services at various seasons. Below them came bordars and cottars who had similar status and work. Three officers, a steward, a bailiff and a reeve, looked after the work of the manor. The steward held the manorial court and judged disputes and cases relating to rent (*gafol*) and services according to the customs of the manor, and watched over bailiffs. The bailiff was the resident representative of the lord in the manor and looked after cultivation of the domain. The reeve was a sort of foreman of

the village responsible for the performance of villein services. The manor had no political function. It was a private dominical unit for the purposes of agriculture, while the king's fee was a unit for military service, and involved government duty.

According to *Stubbs* the feudal system is a graduated system based on land tenure in which every lord taxed and commanded every class below. He described military tenure as its main characteristic. According to *Freeman* "while centrally feudalism made the sovereign a land-owner, locally land-owners became sovereign." *Maitland* regarded seignorial justice as its chief characteristic. It had a tenurial, a personal and a judicial element. The system of seignorial justice developed fully after the conquest. In the Anglo-Saxon times there were lordless villages but after the conquest we find the principle "nulle terre sans seigneur" greatly extended.

Cheeks on feudalism in England.

Feudalism had all along been centrifugal. But the prevalence of scattered estates and the absence of compact earldoms prevented feudal lords from uniting or rebelling easily. The other counter balancing forces were the maintenance of English institutions of local government, such as the local courts, the local officers, the fyrd, the continued association of ecclesiastics in the Commune Concilium, and the oath of Salisbury. William I combined in him all the powers of the Anglo-Saxon kingship with those of the feudal sovereign.

Relation of Knights to Thegns.

It does not seem that the body of the Anglo-Saxon thegns who had acquired a number of feudal characteristics passed into the body of Norman knights. Thegns were generally king's thegns, but knights were not. Thegns were essentially connected with the king's household, but knights were primarily landholders by military service. Thegns rendered personal service to the king. They held land in

allodial ownership. The incidents and institutions of thegnship did not pass into those of knighthood. There were tenants-in-chief intervening between the king and the knights.

The Domesday Book. Its nature.

The Domesday Survey (1086) was an inquest of land. It was based on the "oath of the sheriff of the shire, and of all the barons and of their Frenchmen and of the whole hundred, of the priest, the reeve and six villeins of each vill." The book recorded information about the names of manors and their holders, the number of hides, ploughs, villeins, cotters, serfs, freemen, sokemen, of meadows, pastures, mills, forests, fishponds, and the value of the manor in the time of the Confessor and in William's reign, and how much each freeman and sokeman held, and how much was under cultivation. The object was a fresh assessment for the purposes of levying Danegeld by finding out the population and resources of each fief, royal, baronial, knightly and burghal.

Its results.

It classified tenements as they were great and small. It resulted in separating sokemen who paid judicial service and villeins who paid economic service. Thus arose the later division of freeholders and copyholders. The persons of dubious status were put in a lower class. Any dubious estate or village became a manor. Thus it created new manors by regarding estates with halls, districts with obligations of foodrents, and tracts of land under a single person, as manors.

The manor and the knights' fee sometimes coincided. But the manor and the village normally coincided. They had the same names but different functions. The manor was a private dominical unit. The village was a public political unit. In Tudor times the vill became the parish.

Feudal Courts.

Tenants gathered round their lord not only as an army in war but also as a court or council in peace. The Conqueror expected them to pay suit (secta) thrice a year. A

similar suit was paid by subvassals to vassals. This suit was judicial and not deliberative. There was the king's court or council (Curia Regis) and there were lord's courts. These feudal courts dealt with matters relating to feudal tenures and feudal obligations according to feudal customs.

Seignorial Courts.

Lords also secured from the king rights of private or seignorial courts where they administered public justice according to the law of the land in criminal matters.

Curia Regis.

Curia Regis or the king's council was 'a drawing room, a rent-receiving room and a court of feudal justice,' where bishops and barons were summoned and attended as feudal tenants-in-chief to do suit and service. It was primarily an assembly of royal household officers, favourites and nobles whom the king summoned, and where justice and counsel were held. William I passed in his courts statutes in the form "I have by my *common council* and by the counsel of all archbishops, bishops, abbots and chief men of the realm determined." In 1085 he ordered Domesday Survey "after his deep speech with the Witan."

Common Council.

William II's reign (1087-1100) was not constitutionally important. He maintained the royal supremacy, and rigidly exacted his feudal dues from lay and ecclesiastical fiefs. He repressed rebellious barons. He seized vacant sees and took their revenues. He sometimes granted church lands to his knights and demanded money payments, analogous to reliefs, from newly appointed bishops. The church grew hostile. The people were also troubled by his exactions because Ranulf Flambard, his justiciar, "drove the king's gemots all over England", that is, he forced the hundred and shire courts to provide money for the king. Thus all classes were discontented.

William II.

Henry I (1100-1135) issued a *charter* at the begin-

ning of his reign with a view to conciliate all classes, and to strengthen his position as a king. He was not able to maintain entirely his father's absolutism because he was opposed by his elder brother Robert who ruled in Normandy and by the barons who had lands in Normandy. The Charter of 1100 was the first written promise made by the king to his subjects. It became a precedent for later charters. It contained (1) promises to the church of freedom and of abolition of evil customs, (2) promises to the barons of lawful reliefs and fines, no forced marriages of heiresses, freedom of lands held by knight service from other service and freedom to dispose of personal property by will, (3) promises to the people of the laws of Edward the Confessor as improved by William I and of good coinage, and (4) The provision that the concessions granted to the barons were to be granted by them to their tenants.

Henry I. His Charter.

The charter was a feudal document. It revoked the feudal abuses of Rufus's reign and established that there were certain feudal rights which the king could not legally take away. He however did not recede from the Conqueror's position. He refused to allow freedom of election to the clergy and restored to the people their old laws with changes made by William I.

Its character.

He began to employ a professional class of ministers in his work of administration in place of feudal nobles. The four old officers, the High Steward, Butler, Chamberlain and Constable, survived the conquest and became hereditary. They held land by grand serjeanty tenure which meant definite household services. Their offices became merely titulary because of the rise of the new ministerial nobility. The new ministers were king's familiares or personal servants and were appointed by him. They were dependent on him and acted as a counterpoise to the feudal nobles. The *Justiciar* was the king's chief minister and acted as a

His ministers.

regent in the king's absence; the *Chancellor* worked as his private secretary, wrote his letters, received his petitions and issued his writs; *the treasurer* examined the sheriff's accounts and recorded the business of the exchequer; and the *marshall* looked after the court etiquette and ceremonies. There were others. Each had a staff under him.

He organised the administrative machinery in the matter of royal justice and finance. This increased royal power. The old Saxon system continued in criminal matters in local courts. But a new Norman system based on the king's will as the feudal lord was growing up and taking the place of the old. The idea of the king's peace and the king's pleas, that is, cases reserved especially to the king and his courts, increased. A crime became an offence against the king and was a breach of the king's peace. More and more cases came to be included in the list, such as felonies, murder, robbery, arson, false coining. The reason was that the people felt sure of getting justice in the king's courts. Thus the royal justice with a fixed and common procedure extended at the expense of the local courts and their varying procedures.

Royal justice.

Criminal.

In the matter of civil justice he introduced some changes. He surrounded himself with a trained body of judges. At their head was the chief justiciar. To the Curia Regis appeals came from all parts of the country as the supreme court where these trained judges largely heard cases. He instituted the system of *writ*. It was a king's order to the sheriff or other officer or to a private person to perform some specified act. The writ was issued to declare laws and to do justice.

Civil.

Writ.

The *Jury system* arose in this reign. It was used for finding out a disputed or desired fact by the testimony of those in the neighbourhood who were most likely to

Jury system.

know it. Some persons who knew the facts were summoned before an officer commissioned for the purpose, were put upon an oath (juré) and then specific questions were put to them and they were asked to state whether the fact was this or that. The system was a prerogative institution, and was used by the king for his own judicial and financial purposes. It was allowed to be used by private persons on payment.

Itinerant justices.

Henry I also instituted a system of *itinerant justices* and *courts*. At first they were used for fiscal purposes and then they came to exercise judicial functions. Writs were issued to them as justices commissioned to act for the king and as mandates for the jury to appear for the specific purpose mentioned. Very often the sheriff was commissioned to do the work alone or along with other justices. These itinerant justices were the king's missi and went round and held the king's court (Curia Regis) in the hundred or shire court and used the machinery of these courts for their own purposes.

Court of Exchequer.

The financial system was also organised. For the purposes of collection a regular staff was set up which assessed and collected royal revenue and kept proper accounts. This work was done in the Exchequer (Scaccarium) Court. At its head were the barones scaccarii. They received all the royal income collected through and brought in by sheriffs, called *sheriffs' ferm*. It consisted of the proceeds of Danegeld, the rent of royal domain, feudal dues, and proceeds of royal pleas in local courts. Roger, Bishop of Salisbury, who was made the justiciar in 1107 was largely responsible for this organisation. The Court of Exchequer was the Curia Regis, doing special financial work. The name 'exchequer' is supposed to have arisen from the system of accounting in which members sat round a table with a chequered cloth divided into columns of squares for pence, shillings, pounds and multiples of pounds. Sheriffs had to render accounts and to pay

the collections twice a year. The exchequer came to consist of two courts. The lower one was the court of receipts and the upper one was the court of audit which checked the lower court.

Stephen.

Stephen reigned from 1135 to 1154. His disputed title and weakness of character were responsible for the growth of the evils of uncontrolled feudalism. Two parties arose in the kingdom and concessions had to be made to win support. Powerful barons and bishops resisted king's authority.

His rule and its results.

He tried to win over the barons by lavish grants of land and jurisdiction, and the bishops by promises of freedom of election and jurisdiction to the church. He could hardly get loyal support from turbulent barons. They took advantage of the weakness of the central government and built many castles and demanded large grants of money and land. Feudal law courts were unable to enforce their decisions. Anarchy prevailed. There was no peace and security. His reign was a great setback to the royal power and its methods of centralisation. The church strengthened its position by taking sides and acquired independent rights regarding the trial of ecclesiastical persons in church courts and elections of bishops. Stephen issued two charters; one (1135) confirmed all the liberties and good laws of his predecessor; and the other (1136) granted the holy church its freedom and powers.

Royal Courts.

The whole system of Norman Courts can be classified under four heads. Firstly, there were *royal courts* such as the Curia Regis, Itinerant Courts and Sheriff's Tourns. A *Sheriff's tourn* or *leet* was a periodical court held twice a year in every hundred in which the sheriff supervised the system of *tithing*, now called *frankpledge*. This sheriff's inspection was called the holding of "the view of frankpledge".

Secondly, there were the old *communal courts*.

Ordinary free-holders were normal suitors to these shire and hundred courts. The suitors were called doomesmen or judges and gave dooms according to the old Anglo-Saxon law.

Communal Courts.

Thirdly, there were new *seignorial courts*. They were of two kinds, one was the *franchisal court*. Franchise or libertas meant a delegation of public justice to private individuals. The law exercised in this court was the old Anglo-Saxon customary law. It was a criminal and not a civil court. Kings made these grants of franchises. In some cases the right to "view of frankpledge" was granted. It was held in a separate court called the court-leet. There minor offences were punished. These courts gave the lord power and profits of jurisdiction.

Seignorial Courts.

Franchisal Court.

The other court was the *feudal court*. It was connected with feudal cases. Its first type was the *Honour Court* or *Baronial Court* which exercised jurisdiction in pleas of land relating to various fiefs and rights of feudal tenants according to feudal law. Its second type was the *manorial or Dománial Court* which judged disputes arising in a manor concerning largely agrarian or economic matters according to manorial customs.

Feudal Court.

The relation of the Franchisal Court to the Feudal Court was intimate. The Franchisal court was a separate aspect of the Feudal Court of Honour and Manor. They would be the same in composition and sessions. Before 1300 the seignorial court which did both the franchisal and feudal work began to be called a *Hall moot*. It was meant for both freeholders and copyholders. Freeholders were both suitors and judges. In the case of copyholders stewards acted as judges and copyholders as jurors. Copyholders held land by a copy of the custom of the manor which was recorded in.

Hall-moot.

the court roll. They had no locus standi against their lord.

Fourthly, there were *ecclesiastical courts*. They dealt with cases concerning the cure of souls according to religious canons. William I passed a statute in 1066 separating the spiritual courts from the temporal courts, with the consent of the common council, and with the counsel of archbishops, bishops, abbots and chief men of the realm. This led to the creation of new and independent bishop's courts.

Ecclesiastical Courts.

In the social organisation there arose a superimposed class of a new Norman nobility. Saxon nobles and freemen gradually lost their privileged position and freedom. There was also a steady growth of a villein class in England. Freemen got depressed under the influences of feudalism. There was no middle class of any standing. The clergy maintained their privileged position.

Social organisation.

The king was the state. It was his estate. Its officers, its revenues, its justice and courts were his private concern and belonged to his household. The Concilium or Curia did his business and was summoned at his will. Its decisions were his decisions. People petitioned him for redress of grievances against barons, his officers and local courts. He was anointed at his coronation and was thus a consecrated king, ruling by the grace of God. Therefore he was supreme and had a divine right to rule. Rebellion was considered a sacrilege. In the matter of royal income kings retained the old revenues and added only the feudal dues.

Feudal and religious conception of Kingship.

The earldom quickly lost its old significance after 1066. The Domesday Book recored earl's rights and perquisites but to all appearances no earl remained except in a few places. He was not any regular officer and had no governmental duties. His was a mere title. The sub-

The local officers. Earl.

ordination of the sheriff (vicecomes) to the earl was ended. The third penny generally passed into the king's hands. It was occasionally granted to the sheriff. It was the sheriff and not the earl who had charge of public justice and the maintenance of peace, and the earl's military headship of the shire was at an end. Sheriff's power and dignity increased as the earl and the bishop disappeared from the county court. Soon after 1066 a county was being called a vicecomitatus or sheriffdom. He presided over the shire court and was the agent of the king in the locality. He was removable from office. He was not appointed for a fixed term. Some leading sheriffs of William I held office for life. Some were great tenants-in-chief. Some held great household offices at Court. Some were specially employed at the Curia Regis or elsewhere. A number appeared at the meetings of the Curia Regis as important barons or household officers. No official superior stood between him and the king. Some were hereditary. He had undersheriffs or reeves for fiscal duties. Hundred men depended on him.

Sheriff (1066-1100).

His position.

Firstly, he was the head of the *judicial system* of the shire. He dealt with the pleas of the Crown and the ordinary causes triable in the shire and hundred courts. He presided over the two great sessions of each hundred held annually to make a view of frankpledge. Secondly, to him were communicated the king's grants, proclamations and *administrative orders*. It was through his jurisdiction that the king's financial claims were enforced. He was often directed by a royal writ to reserve certain cases to the king's court, to assume judicial powers, or to make an inquest for ascertaining facts. Thirdly, he summoned and led the shire levies. It was his military function. He maintained peace and administered matters of *police* in the *hundred*. Lastly, he had charge of the king's property and of his *fiscal* and *feudal rights*. He paid as *firma*

His duties.

comitatus one lump sum for the royal revenues of the county which were farmed. He gathered the income from the pleas of the hundred, from the special pleas of the crown, such as murdrum and forisfactura and feudal dues. Danegeld and port-dues were collected by reeves under his charge. The Norman sheriff was famous for his extortion and oppression. From 1066-1100 his personal prestige was great. He had a feudal status. It was the period of baronial shrievalty. Despite his feudal interests and baronial status, he was attached to the cause of strong monarchy.

His position (1100-1154).

Under Henry I new men were made sheriffs in place of powerful baronial sheriffs. They lacked territorial influence and family prestige. New families were entrusted with administrative work. The sheriff was constantly changed and transferred. Royal inquests were ordered through him. He was to summon a jury of recognition to settle a disputed point, or to summon a hundred to try a cause or to hold a recognition. His position with reference to judicial powers began to decline being interfered with by jurisdictional powers of feudal tenants and royal itinerant justices. His fiscal duties were checked by the exchequer court. Firma burgi began to be paid directly to the exchequer. His office came to be subordinated to the king's justices in eyre who took over the pleas of the crown. He was both the financial and judicial agent of the Crown. He lost the judicial headship of the shire and therefore some administrative importance.

New judicial offences and procedure.

Normans introduced the institutions of *murdrum* and *duel*. Murdrum was intended to protect Normans. The body of any man who was found murdered was assumed to be that of a Norman. The district was to prove to the contrary. If it failed to prove it, it was heavily amerced, that is, fined. This process was called the *'presentment of Englishry'*. By the end of the 12th century the fine was levied even if any one was found dead. *Duel* was a trial by combat. It was

an appeal to arms and heaven which gave victory to the side of justice. It was used to settle cases concerning ownership of property. The Normans also introduced proof by *Inquest* and *Jury system*. The old methods of tithing, watch and ward, and ordeal continued.

The church on the eve of the Conquest was suffering from the evils of marriage, pluralism and simony.

The Norman Church.

It had become isolated, secular and unlearned. Stigand the archbishop of Canterbury and other English bishops and abbots who had supported the anti-pope Benedict were deposed. Lanfranc was made the Archbishop. Normans were made bishops. The religious movements of Europe, the doctrine of the supremacy of Papacy and the Canon Law affected her. The English church found her organisers, defenders and reformers in the persons of Lanfranc, Anselm and Thomas a Becket. Lanfranc thought that the reformation of the church depended on the maintenance of the royal power and worked harmoniously with William I and William II. The church was reorganised and reformed. The authority of Canterbury over York was recognised. Ecclesiastical laws were passed in national synods. Spiritual pleas were removed from temporal courts. The character of the clergy was improved by opposition to their marriage and to the practice of simony or purchase of livings. In spite of this independence of the church from the state in legislative and judicial matters, and of the closer connection with Rome,

Lanfranc's policy.

William I's policy.

William I refused to take an oath of fealty to the Pope, Gregory VII. He believed in the cluniac reforms of the purity of the faith and the celebacy of the clergy and the attack on simony but not in the right of the Pope to be a great feudal lord of whom all kings were to be beneficiaries. He maintained royal supremacy in the administration of the church as regards its relations to Rome and its own internal affairs, and in feudal matters relating to ecclesiastical

fiefs. He only sanctioned the payment of Peter's Pence to Rome. King's consent was necessary for the recognition of the Pope in England, for the meeting of the synod and the acceptance of its canons, for the receipt of the papal bull and legate, and for the ex-communication and penalties imposed on tenants-in-chief. He maintained the Anglo-Saxon royal privileges which did not recognise any direct papal control. This new religious settlement left undefined the relations between the king and archbishops, and between the separated church and lay courts as regards their jurisdiction. The former led to the dispute about lay investiture between Henry I and Anselm and the latter between Henry II and Becket. The church claimed immunity from secular jurisdiction, common law, and kingly control. In these conflicts the supremacy of the papal court as a tribunal of appeal became inevitable, though no right of appeal to Rome in ecclesiastical matters was acknowledged. Hence came papal interference and papal interdicts.

Points of conflict.

At the head of the Papacy at that time was Gregory VII (1076-1085) who was greatly influenced by the Cluniac movement (10th century) which emphasized asceticism and celibacy amongst the clergy and purity and strict centralisation of all religious life under the supremacy of the Pope, and which condemned secularisation and upheld the independence of ecclesiastical life and organisation. Hildebrand made extreme claims of control over the secular and religious affairs of Christendom and of natural churches. His ideas conflicted with the claims and privileges of royal power in English religious church. Lanfranc and William I got on well together but under his successors a struggle arose between the Crown and the Church.

Pope Gregory VII's ideals.

William II "who feared not God neither regarded man" wanted to maintain the supremacy of the royal power in ecclesiastical matters. He struggled against Anselm the

William II's policy.

Archbishop of Canterbury who was too religious to play the statesman like Lanfranc. William II was too rapacious to act with moderation like his father. At that time there was a schism in the church. There were two popes. William refused to acknowledge either.

Anselm's attitude.

Anselm who had accepted Hildebrandine ideals acknowledged (1097) Urban without the king's consent. He also challenged the administrative control of the church by the king and the extent of his feudal control. After some time William acknowledged Urban, and Anselm carried out his point by taking the pall sent by Urban from the high altar and not from the king's hand, and thus asserted the independence of his office from the temporal control and its dependence on the Papal See. Another cause of dispute arose when the Archbishop as a feudal lord was reproved for not properly equipping soldiers sent to fight for the king. Anselm got disgusted and left England in 1097, though forbidden to appeal to Rome about his duty to the king. In 1099 the Pope decided against Lay Investiture.

The trouble over lay investiture arose during Henry I's reign. In his charter (1100) he promised

Henry I's policy.

to make the holy church of god free, and not to sell, rent or take anything from the domain of the church or from its men until a successor was installed into it. He invited Anselm to return. Anselm came back but refused to recognise royal feudal control, to do homage and swear fealty for his temporalities, to receive the crozier and the ring from the king's hands and to acknowledge the bishops elected and invested with ring and staff by Henry I. Henry followed his father's practice. He maintained that as the state was feudal and the bishops held land they were under the same obligations as the other feudal barons who were appointed by him and paid him homage. He asserted that his predecessors had exercised full authority over bishops. Anselm

Anselm's opposition.

held that bishops being spiritual were superior to temporal

monarchs and should be chosen by the church with regard to spiritual needs alone. Anselm wanted to follow the decision of the Lateran Council. At last in 1106 A.C. they came to a compromise. Bishops were to be elected by the chapter of the church in the king's court. After their election but before their consecration they were to do homage for their temporalities or lands of their sees. Then the ring and the crozier were to be given by the archbishop or the Pope. Henry I asserted the supremacy of the king and royal consent was still necessary for appeals to Rome and the admission of papal legates.

Compromise.

Under Stephen the church obtained great powers. In his second charter (1136) he granted freedom to the church. No simony was allowed. He permitted justice and power over all ecclesiastical persons and their effects to be in the hands of bishops, made all its holdings free and absolute, and allowed vacant sees and holdings to be in the custody of all clerks till a pastor was canonically appointed. Thus he removed all civil and criminal cases in which ecclesiastics were involved from the state courts into church courts.

Stephen's policy.

In spite of Henry I's order (1109-1111) for the holding of the courts of the shire and hundred as they were held before we find that the hundred courts declined rapidly in the 12th century. It was due to the growing importance of manorial courts which were frequently allowed to take a view of frankpledge (frithborh or tithing) and dealt with suits originally determined in the hundred, and also due to the practice of granting or letting hundreds to private persons.

Local Courts.

CHAPTER V

THE ANGEVIN OR EARLY PLANTAGENET PERIOD (1154—1216).

Its general character.

The Angevins strengthened the central government and created links between the central authority and local institutions. During this period the Normans and the English gradually united into one people. One law was developed for the whole realm and every person and place were brought under central control. Royal absolutism was becoming constitutional and expressed itself in forms of laws and institutions.

Henry II's work.

Henry II (1154-1189) restored the policy and institutions of Henry I and developed them further. He expelled Stephen's foreign mercenaries, destroyed adulterine castles, resumed royal castles and all the grants made from the royal domain, restored the coinage and held royal councils frequently, and with the general support of the barons ruled the country. Thus he ended the anarchy of the previous reign. In the administration of the country he restored and developed the Curia Regis, the Exchequer, and the system of writs, itinerant justices and juries. He fully reorganised the official machinery of sheriffs and other higher officials. His assertion of the royal authority weakened the power of the barons and the clergy. His was a thorough anti-feudal policy.

The tenant-in-chief supplied his quota of knights either by hiring soldiers for the time or by keeping permanent paid men in his household or by sub-infeudating knights for small grants of land. In the Anglo-Saxon period one had to pay fyrdwite if he failed to serve in the fyrd. Under Henry I tenants-in-chief either supplied their quota or paid a fine in lieu

of it. In 1109 he had accepted money payments from the church in lieu of military service as it suited him. In 1156 Henry II began to accept money from the clergy instead of military service for their lands. This commutation of military service by money payments or by supplying hired substitutes was known as *Scutage*. It must have prevailed from the time of the origin of knight service. The baron who had not enfeoffed a sufficient number of knights in order to discharge his due service must have always hired substitutes to fill the number and paid them. Instead of giving substitutes the barons began to give money direct to the king, but the option lay with the king not with the barons. If the baron wished to stay away, he had to bargain with the king for the amount to be paid and also to pay an additional fine for defect in service. Scutage was not a normal burden but levied at the king's choice. In 1159 Henry II began to accept twenty shillings in payment of the service of a knight for forty days at the rate of two marks or eight pence a day. The indeterminate fine paid by the tenant-in-chief was sometimes called the scutage as distinguished from the proper scutage or the determinate amount to be received by the tenant-in-chief from each knight's fee or shield and to be paid to the king. Thus sub-tenants instead of holding land by night service began to hold it by scutage (escuage). This sum was often paid directly to the king through the sheriff instead of to the lord. The sheriff collected scutage in both cases. Henry II did not take it from all. He levied it only seven times. With this money the king hired for his foreign wars mercenaries who were more loyal to him and directly dependent on him and who could serve longer than forty days. This system of scutage made the king independent and weakened the baronial army.

Scutage.

In 1166 an inquest was made to discover the amount of service on the basis of knights enfeoffed due from each tenant-in-chief and the king charged scutage on each fee

Inquest of 1166.

at the rate of 20 shillings. Those who had less knights had to pay for the alance. Those who had more were made to give that number.

To keep the turbulent barons under check at home he issued the Assize of Arms (1181) which compelled every man to provide himself with arms according to his rank and to serve in the national militia.

Assize of Arms.

Under Henry II all crimes became king's cases. They were considered breaches of his peace which was ubiquitous. He encroached upon the powers of the seignorial courts which were the strength of feudalism. The Assizes of Clarendon (1166) and Northampton (1176) reserved all serious crimes for the royal judges either going on circuit or sitting at the centre as members of the Curia Regis. In criminal trials he insisted on the ordeal procedure when necessary as against the duel method. Trial by ordeal was forbidden by the church in 1215.

The growth's of the King's Justice.

From the time of the Normans the method of king's inquiry was the frequent issuing of eyres or iters, that is, itinerant inquiries for financial or judicial purposes. In the Iter of 1096 we find that the king sent his four lords to examine royal pleas regarding the royal right to a particular manor. Domesday Survey was a similar itinerant inquiry made by the king's barons with the help of local jurors. These eyres proved a check on sheriff's independence and undermined the power of local and lord's courts. The itinerant commissioners were royal household officers and members of the Curia Regis.

The system of lyre.

Henry II expanded the judicial work of the Curia Regis. Justices in eyre or on circuit made Curia Regis a moving body. One set of justices tried all cases, criminal, civil and financial, and the behaviour of shires, hundreds and vills in respect of watch and ward, hue

Itinerant justices.

and cry. The same judges generally composed the central and eyre courts. The Assize of Clarendon (1166) laid down that no franchise was to exclude royal justice and justices who were to sit both in the baronial and local courts and deal with all crimes. The country was divided into six circuits (1173) each with three judges of the Exchequer representing the King. Several changes in the numbers and circuits were made in his reign. In 1178 five judges were appointed to be with him from the household out of the 18 itinerant judges to sit as a Curia Regis to hear all the claims and plaints of the people in both crown and common pleas and to do justice. From the time of Henry I the Curia Regis, as a court of feudal suzerain, was filled with his tenants-in-chief and dealt with the baronial pleas in land just as a manorial court; and as a court of the sovereign it was filled with professional clerks and dealt with all the petitions and appeals of subjects. Under Henry II the growth of sovereign aspect was rapid. The Assizes of Clarendon and Northampton remodelled the local administration of justice. Itinerant justices made regular inquiries into crimes with the help of jurors summoned from the localities.

Jury system.

The Jury system in its origin was frankish and was as a whole brought in by the Norman Kings. It was a royal prerogative institution. It meant a select number of men representing on oath the common report of their locality on a question of fact before the royal judges. The jurors were called sworn *recognitors*, that is, those who knew and declared on oath facts. This system

Jury of Recognition.

was known as the *Jury of recognition*. The Anglo-Saxon *compurgators* swore to the truth of the oath of a party to the case; the recognitors swore to the truth of the facts of the case. Under Henry II the Jury of recognition came to be greatly employed. The King permitted this prerogative procedure to be made into a normal legal procedure of the country. It was freely used for

financial and judicial purposes. A royal writ was issued describing the case and giving the justices authority to try it. In 1181 it was used for the purposes of the Assize of Arms; and in 1188 to assess the *Saladin Tithe* or the first tax on personal property.

The Jury system came to be applied in civil and criminal cases. Civil cases concerning the ownership of property were usually decided by the *duel*, but Henry II allowed the system of *inquest* to be used in the forms of the *Grand Assize* and *the Petty Assize*. The term 'assize' meant either a law, an assembly or a form of trial.

Civil cases.

Grand Assize.

In the *Grand Assize* twelve sworn knights of the locality, called recognitors, were to give evidence as to the title in cases of disputed claims to the ownership of land held by free tenure, as a compulsory alternative to trial by battle between the claimants. The Grand Assize was the origin of the modern Civil or Petty Jury. In the *Petty Assize* twelve men (free holders as well as knights) were to give evidence in cases of Novel Disseisin, Morte d' Ancestor and Darrein Presentment. These jurors were witnesses of fact rather than judges of fact. The

Petty Assize.

Novel Disseisin.

Assize of Novel Disseisin (1176) gave the plaintiff a writ bidding the sheriff to summon twelve men to declare whether the plaintiff had been newly and unjustly dispossessed of his land by the defendant. The *Assize of Morte d' Ancestor* (1176) was established to find out from twelve recognitors the conditions of the tenure of a deceased ancestor—if he was a hereditary tenant, if the plaintiff was his next heir, and if the defendant had seized his land. *The Assize of Darrein Presentment* (1164) tried with the help of twelve jurors to decide the quarrel between two persons about the right of presentment to a vacant church living by finding out the person who last exercised that right.

Morte d'ancestor.

Darrein Presentment.

Then he or his heir was to present the new one. The *Assize Utrum* (1164) was for finding out in cases of disputes about a tenement between a layman and a clerk whether it was a frankalmoign or a lay fee by the award of twelve lawful men before the king's justiciar himself. In all these four forms of inquest the twelve recognitors were nominated by the sheriff. Only in the Grand Assize the sheriff was to summon four knights who chose twelve knights of the same neighbourhood. The people had to pay for this method of trial in the king's court. To the king justice was a great emolument.

Assize Utrum.

In criminal cases the system used was called *Jury of Presentment*. It was the origin of the *grand jury*. It was not the injured or his relative but the sworn men of the locality who made the accusation. In the laws of Ethelred II (997 A.C.) we find that "a gemot be held in every wapentake, and the twelve senior thegns go out and the reeve with them, and swear on the relic that they will accuse no innocent man nor conceal any guilty one." This looks like a Jury of Presentment, and may be its origin. In the laws of Henry I the sheriff's tour not only reviewed the tithing men in a hundred but asked them tales, according to Maitland, about the criminals generally. Twelve men were present by the side of the sheriff when these tales were told. They sifted these tales and then reported to the shire court such tales as were placita regia. This system may have been the origin of the *Jury of Presentment*. It affected the position of the sheriff and the power of the franchisal court. The sheriff did not and could not try the royal pleas alone. By the Assize of Clarendon (1166) Henry II established this system of the Jury of Presentment or Accusation as a normal method of trial for all crimes. Twelve of the most legal men from each hundred and four of the most legal men from each vill were to present criminals before the itinerant justices and sheriff upon their oath that they will tell the truth.

Criminal cases.

Jury of Presentment.

If the accused failed at an ordeal he received the legal punishment of the crime; if he was successful he was exiled. This system led to the discontinuance of compurgation. The Jury both of Recognition and Presentment differed from the later system. None of the recognitors had any voice in judging the case. They simply declared what they knew and left the decision to judges. The Jurors of Presentment were neither accusers nor witnesses to crime. They did not swear that a particular person had committed a crime. They simply presented the names of those who were regarded by common report to have committed a crime. In 1215 the Lateran Council abolished ordeal as a method of trial. Therefore arose a second jury of neighbours called *Petty Jury* whose function was to judge the case, that is, to accept or refuse the presentments of the Grand Jury. Then 'afforcing' jurors possessing special knowledge of the case were added to the Petty Jury. Finally a separation of 'afforcing' jurors from the Petty Jury took place into a *Jury of Afforcement* or witnesses. The Petty Jury or Jury proper became the judge of the fact, the law being declared by the presiding officer acting in the king's name. In the reign of Henry IV the jury began to hear evidence in the open court, and by the time of Mary Tudor it was a recognised principle that the jury should be unprejudiced by the previous knowledge of the accused.

Compared with Modern Jury.

Petty Jury.

The extension of civil and criminal justice of the crown resulted in limiting the power of the franchisal and manorial courts in the cases of land pleas of under-tenants. Henry II established his sole right of deciding the cases of seisin or possession, for in them his peace was involved. Of the four possessory assizes two were lay and two ecclesiastical. He also interfered in the rights of ownership (jus) in three ways. Firstly, cases affecting ownership went to the king by *right of appeal*. He established the prin-

Writs relating to the ownership of land.

ciple that no under-tenant was needed to answer in the court of a lord concerning the ownership of land unless a royal *writ of right* (jus) was issued, authorising a trial in that court. The case could be carried by appeal from the lord's court to the king's court. Secondly, he could bring a case to the king's court by *writ precipe*. It was a peremptory command addressed to the sheriff ordering him to send a particular case to be tried in the king's court instead of the local or lord's court. Thirdly, cases of ownership were tried in the king's court by the procedure of *Grand Assize* of twelve lawful men, and not as in possessory assizes by twelve ordinary men. Thus by 1215 cases of ownership came into the Curia Regis. Cases of possession always came to it. All crimes came to it. All justice seemed to be centralised in it. This created a common law for all England which ignored clerical and baronial privileges and immunities. This law had its source in the king and was interpreted by royal justices in royal courts. It saved England from the confusion of many courts and many laws. The law was one and the king administered through law. But the law was only for free-men. The increase of royal justice meant not only larger royal income but better order and stronger government. Later development in law took place by the multiplication of royal writs and the classification of legal actions.

Inquest of Sheriffs.

In 1170 Henry ordered an Inquest of Sheriffs because loud complaints of their exactions and of the oppressiveness of their jurisdictions were made. He issued a commission to a body of barons to investigate the administration of justice in shire and hundred courts and royal domain, and in the seignorial franchises and into the charges against sheriffs and bailiffs. Some baronial sheriffs were removed and new ones were appointed who were amenable to the royal will and were more skilled administrators.

In the matter of church rights Henry asserted the Norman rights and powers as against Becket's anti-royal opposition. The Arch-bishop (1162—1170) who had accepted the Hildebrandine theory claimed immunity for the clergy from all secular justice and insisted on the enforcement of all clerical privileges. Henry insisted on the existing ancient customs of the realm. Their main contention was about the punishment of criminous clerks who claimed the benefit of the clergy in cases of felony and murder. The king got Becket to consent to observe old customs of the realm. A *recognition* of them was made before the Arch-bishops, bishops and clergy, and the earls, barons and nobles of the realm. They acknowledged them. They were issued in the form of the Constitutions of Clarendon in 1164 as a remembrance or acknowledgment of a certain part of the customs, liberties and dignities of the realm. The most important clauses were: (1) clerks accused of crime were to answer the charge in the king's court, to be tried in the ecclesiastical court and if convicted to be degraded and sent to the king's court for sentence; (2) the clergy were not to leave the kingdom without the license of the king; (3) appeals from ecclesiastical courts were to go to the king, and by his order to be concluded in the arch-bishop's court, unless he allowed them to be carried further, that is, to Rome; (4) elections to arch-bishoprics, bishoprics, abbacies and priories were to be made by the clergy in the king's chapel, and the man elected was to do homage to the king; (5) no one who held of the king in chief nor any of his attendants should be ex-communicated, nor the land of any of them be put under an interdict without the knowledge of the king; and (6) suits as to the right of presentation to churches should be tried in secular courts as well as those relating to the ownership of land unless

Church and State.

Becket's stand.

Constitution of Clarendon.

it could be proved that the church held by frankalmoign tenure. Becket however changed his mind and refused to acknowledge them. But the king had asserted and strengthened the cause of royal authority and common law. Becket was later murdered in 1170. Henry II to whom the guilt was imputed was absolved by the Concordat of Avranches where a compromise was signed with the church in which the question of criminous clerks was not mentioned. The struggle was a contest between the conception of a universal monarchical church with its supremacy and centralisation under Papacy and the Anglo-Norman conception of State independence and supremacy in secular and feudal matters. The control over criminous clerks and over the appointment to church livings, and the fealty, suit and service from ecclesiastical fiefholders were essential for the supreme authority of the state and for the independence of the army, courts and councils of the realm. But with the church the question went deeper. Were the kings who were paramount in the state to be also paramount in the church? The church considered herself as the champion of morality, purity and faith, and the supreme authority in these matters. On account of these claims both of the state and the church, royal tyranny and papal tyranny were likely to arise under extreme headed monarchs and popes. But in the interests of England as a nation the success of the royal claims was necessary and found beneficial. According to Dr. Barker there is an analogy between the judicial growth of a single royal law under Henry II and the parliamentary growth of a single royal court under Edward I. In their origins these two growths were parallel and came from the king for the financial gain. In their process the judicial growth meant that the king sent his representatives from the council to shire courts and got fines; and the parliamentary growth meant that the king asked local

The quarrel.

The problem.

courts to send representatives to the council to vote money to him.

Richard I (1189-1199).

Richard's long absence on crusades allowed time for Henry's system of government to be tried and to take root. Able men trained under Henry II administered the country. The jury system was used for assessment of shires during the justiciarship of Hubert Walter. It trained people to take interest in matters of central government. There were no feudal disturbances. William Longchamp, Bishop of Ely, held the position of the justiciar and chancellor during 1189—1191. He became very unpopular because of his financial exactions to supply money to Richard who had gone on a crusade. He was deposed in the king's absence by the discontented barons with the support of the church. The minister was dismissed though the king was responsible. It is the first instance of a deposition of a royal minister and is therefore of some constitutional significance.

Minister's deposition.

The application of the jury system for the assessment of land in localities is another event of constitutional importance. During the justiciarship of Hubert Walter (1194—1198) the great carucage was levied in 1198. It was a tax of five shillings on each carucate of 100 acres. The old Domesday assessment had become obsolete from the time of Henry II. For the purposes of this tax two knights were elected in each shire-court to assist in the assessment of land. The assessment was made on the evidence of sworn jurors who acted as *representatives* of their locality. The jury system which was employed in the case of moveable property in the Saladin Tithe (1188) was employed in the case of immoveable property in the carucage of 1198.

Carucage.

In 1194 an *Iter* was issued. It laid down the justiciar's demand for knights. to fight in Normandy

on the ground that his church lands were not liable for foreign service. In 1164 Becket had opposed the payment of a land tax (sheriff's aid) as a part of the regular royal income. Hugh's action as that of Becket was individual but it indicated the prevailing spirit of the baronial classes, lay and ecclesiastical.

The Iter of 1194.

In 1194 an *Iter* was issued. It laid down the form of proceeding on a judicial visitation as regards the pleas of the crown, other pleas, and the administration of business in which the king had a direct share. The plan for nominating the jurors of Grand Assize was applied to the Jury of Presentment. Four knights were to be chosen out of the whole county who, upon their oaths, were to chose two lawful knights of every hundred, and these two were to choose upon their oaths ten knights of every hundred or if there should not be knights sufficient, free and lawful men, in order that these twelve might together make inquisition about the pleas of the crown. Further, instructions were given to itinerant justices in their work and procedure. They were to see to the election of four coroners in the shire court who were to be the custodians of the pleas of the crown, that is, to keep the evidence of the crime till the arrival of the justices, instead of sheriffs as before. Sheriffs were forbidden to act as justices in their own counties and lost the power of nominating Grand Juries.

John (1199-1216).

The success of royal absolutism and the concentration of power in royal hands and royal organs were due to the needs of the people for peace and order and the character of the kings, and also to a certain extent to the common interests of both against the turbulent and centrifugal tendencies of barons. But when the kings began to extort money or to treat the church, the barons and the people in general oppressively the early desire for a strong royal power gave

Movement in English history.

rise to discontent and opposition and to a desire for checks on royal absolutism and for securing the customary feudal and religious liberties and privileges of various classes and communities. The movement in English history from 1066 to 1189 was towards the creation of a strong central government as a bulwark against feudal anarchy and from 1189 onwards there is a movement towards the maintenance of liberties as a safeguard against royal tyranny. "Order precedes freedom in historical sequence." From 1189 forces were at work to control the licence of the crown. The benevolent despotism of Henry II used in the interests of law and order became malevolent in the hands of his sons who used it in their own interests for financial extortion. Richard was an absentee and his ministers ruled. But John ruled himself. His wickedness, arrogance and misfortunes provoked hatred and unpopularity. Leading classes and interests combined eventually against him.

John lost the friendship of the church. In the dispute between the monks of the Canterbury Cathedral and the bishops of the province in 1105 about the right of election to the Archbishopric, the Pope Innocent III decided in favour of the monks and ordered them to elect Stephen Langton. John's claim to nominate and his nominee who was forced on them were not accepted. John expelled the monks and refused to receive Langton (1207). He taxed the incomes of beneficed clergy. The Pope placed England under an interdict (restraining the clergy from performing divine service). John ordered the confiscation of the property of the clergy who would observe the interdict (1208). The Pope excommunicated John (1209). He declared him deposed in 1213 and ordered Philip of France to carry out the sentence. John had to submit. He consented to receive Stephen Langton and to hold England as a fief of the Roman See, and to pay the Pope an annual tribute of 1000 marks (1213). He reinstated the exiled clergy and granted the church

Dispute with the Church.

freedom of election (1214). But the compensation which he gave to the church for the confiscations he had made was inadequate. Therefore the clergy were completely alienated from him. They combined with the barons. This submission of John entirely upset the early ecclesiastical policy of English kings. The Pope secured the right of interference and control. The clergy became independent in matters of election. The Pope became the suzerain, and the king the vassal.

Baronial opposition.

The baronial opposition arose in the matters of suit and service. They refused to follow the king into France and stated that they were only bound to serve in England. After the loss of Normandy in 1204 they held no possessions abroad. They had suffered from cruel punishments, heavy exactions and harsh exercise and increase of feudal rights, such as wardship, marriage, scutage, and from the infringement of their judicial rights. The taxation of moveables had also become regular. These grievances united them, and they and the clergy combined against royal tyranny and papal despotism. In the council of St. Albans (1213) held to make inquiries about the losses of bishops under confiscation a proclamation was made by feudal barons for the restoration of good laws and the abolition of bad ones. At the council of St. Edmunds (1214) Stephen Langton produced the charter of Henry I before the assembled barons who swore to demand reforms based on it. He led the united opposition to the king.

Sufferings of other classes.

The mercantile classes and peasantry had also suffered from misrule, from foreign mercenaries who had exacted food and forced labour, and from severe burdens of services and taxes. The commons gave their silent moral support. An opposition party was created.

A party of opposition.

Its opportunity to strike came when the king lost his prestige and power by his failure in the

war with France. He was defeated at the battle of Bouvines (1214). In 1215 the barons made known their claims to the king. He attempted to form a party in England against the barons by granting freedom of election to the church (1215), demanding an oath of allegiance from the barons, taking the vow of a crusader and appealing to the Pope against the barons (1215). He strengthened his position by hiring mercenaries and by fortifying royal castles. The alliance of the king with the Pope alarmed the barons as it would increase both royal and papal tyranny and power. The English clergy were not interested in this increase as it would be harmful to their own secular interests and religious independence. John had refused the baronial demands, and they had formally renounced their allegiance to him. They now marched against him and forced him to submit (1215). The Magna Charta was signed at Runnymede on July 15, 1215.

Magna Charta. Its provisions.

Its main provisions were as follows :—

(1) *Ecclesiastical :* The church was promised freedom as regards its rights. Freedom of elections to bishoprics was granted (1).

(2) *Feudal :* Abuses in reliefs, wardships, marriages, and collection of debts were limited (2—11). No scutage or aid was to be imposed except by the Common Council of the kingdom, excluding however the cases of ransom for the king's person, of the knighting of the king's son, and the marriage of his eldest daughter. These exceptional aids were to receive like assurances from their lords (15, 16, 60).

(3) *Constitutional :* The Common Council summoned for the assessment of any aid or scutage was to consist of (a) the archbishops, bishops, abbots and greater barons summoned individually by letters,

and (b) the lesser barons summoned generally by sheriffs and bailiffs (14).

(4) *Judicial :* The common pleas based on customary laws were not to follow the king's court but to be held at some certain place (17). Two justices of the Curia Regis with four knights elected by the county were to hold four times a year in the county court the possessory assizes of Henry II (19). All fines were to in proportion to the offence and by the oaths of the honest men of the neighbourhood, saving a freeman's freehold, a merchant's merchandise and a villein's wainage that is, plough-team (20). Earls and barons were to be fined by their peers only in proportion to their offences (21). A clergyman was to be fined only in proportion to his lay holding and not according to the extent of his ecclesiastical benefice (22). No sheriff, bailiff, constable or coroner was to hold the pleas of the crown and only men who know law were to be appointed as judges (24). No freeman shall be taken or imprisoned or dispossessed or outlawed or banished or in any way destroyed; nor will we go upon him except by the legal judgment of his peers or by the land of the land (39). To no one will we sell, to no one will we deny or delay right or justice (40).

(5) *Commercial :* Merchants were to be allowed to go out and come into England freely for buying and selling, without unfair tolls (41). Weights and measures were to be uniform in the kingdom (35).

(6) *Urban :* London and all other towns to have their ancient liberties and free customs (13).

(7) *Rural :* Forests made in John's time were to be disforested (44) and forest laws were only to apply to those dwelling in the forests and not outside (47). Twelve sworn knights were to be elected by the county court to make inquiry in each county concerning all "bad customs of the forests" and they were to be immediately abolished (48).

(8) *Royal :* Royal purveyors were not to take corn or chattels without payment, or horses, carriages or timber without the owner's consent (30, 31). Purveyance and pre-emption were the royal prerogatives (surrendered in 1660) of buying provisions at a fair price in preference to every other competitor and without the consent of the owner. The ferms (or rents payable yearly to the king) were not to be increased (25). Harsh regulations respecting debts due to the crown and Jews were to be removed (9—11).

(9) *Securities for the preservation of the charter :* John was to dismiss his foreign mercenaries, and a body of twenty-five to be elected by the whole baronage was to see that the charter was observed by the king. If the king refused to correct the transgressions the twenty-five barons with the whole community of the realm (Communa Totius Terrae) was allowed to distress and injure the king in every way and obtain redress by force (61).

After the charter was granted John collected mercenaries and appealed to the Pope who annulled the charter, excommunicated the barons and suspended Langton (1215). Barons offered the crown to Louis of France who landed in England (1216). But the death

of John and Pope Innocent III averted the danger of a civil war and a new dynasty.

The Magna Charta differed from earlier charters as it was forced from the king and not given voluntarily.

Its character and estimate.

Great constitutional historians have estimated it very highly. *Stubbs* said that it was "a great bulwark of the constitutional liberties of the nation", and that "it was not a mere piece of class legislation but of a whole nation." *Gneist* called it "a pledge of the reconciliation of the classes (Norman and English)." *Hallam* described it as "the keystone of English Liberty." It has been overestimated and wrongly understood in some of its clauses since the seventeenth century.

Old views.

Modern views.

Modern criticism (McKechnie, Maitland, Jenks, Petit Dutailles) tends to regard it as a purely feudal and reactionary document drawn up for the baronage and not for the nation as a whole. It consists mainly of a series of concessions to feudalism. A contemporary described it as "quasi pax inter regem et barones" (Peace between king and barons). John himself put it in the clause (61), "for the sake of god, and for the improvement of our kingdom, and for the better quieting of the hostility sprung up lately between us and our barons, we have made all these concessions; wishing them to enjoy in a complete and firm stability forever, we make and concede to them the security described below." Jenks calls it "the myth of the great charter." Petit Dutailles says "the great charter was an essentially a feudal reaction against the progress of an encroaching royal administration and an arbitrary fiscal system."

Clauses examined.

The English church became free in respect of election, taxation and justice. It did not want royal or papal interference. The barons became free in respect of military service abroad and of seignorial justice and other feudal liberties, and conceived of a feudal

machinery for feudal taxation and control of the King's tyrany. The common council mentioned in clause 14 was constituted on feudal lines. No knights, burgesses or lesser clergy were to be summoned, though in his writ of summons to a council to be held at Oxford (1213), John had directed the sheriff to summon all the Knights of the bailiwick and four discreet men of the country along with all the barons to meet him to consult with him about the affairs of the realm. The clause 14 was omitted in the reissue of 1217. There was no doctrine of parliamentary representation in that clause. The function of the council as given in clause 12 was only to consent to scutage and aid other than customary or reasonable. There is no mention of ordinary taxation at all or of tallages and taxes on moveables. There is no protection given to under-tenants from arbitrary taxes. There were no other powers given to it. The clause 39 which was supposed to have introduced trial by jury (judicium) was really feudal. Barons did not wish to be tried by King's justices who were not of their class in the King's courts by a common law procedure. The clause 34 was aimed at the King's court jurisdiction, and policy of centralisation. The writ praecipe which was a peremptory command addressed to the sheriff ordering him to send a praticular cause relating to land to be tried in the King's court instead of the local or lord's court was not to be given to any one concerning any tenement by which a freeman would lose his court. Thus Henry II's church system, the system of assizes and writs relating to land, the itinerant courts and a common law and common procedure were tried to be set aside in the interests of church and seignorial independence and privileges. The clause 60 is a vague general clause laying down that " all men of our Kingdom as well clergy as laymen, shall observe as far as pertains to them in respect of their men." The position of freemen and villeins in relation to barons did not improve. Henry II's royal securities in the form of writs and courts available

to freemen were limited. The clause (1) "granted liberties to all freemen of our kingdom," and not to villeins. Similarly clauses 20, 39 and 40 gave certain citizen rights (about fine, punishment and justice) to freemen only. Villeins who were the mass of the population were excluded from a legal claim to share in the liberties granted by the charter. Villeins had no legal status in national courts and constitution. Clause 20 relating to the protection of a villein's wainage shows that he is not protected if he happens to be the King's serf and also against the arbitrary fines of his own lord in the seignorial court. The machinery set up in clause 61 was a legalised rebellion. It was not a constitutional method. It was an extreme medicine. It was a destructive method which meant a continuous civil war. There were no ordinary remedies for ordinary breaches of law. The dignity of the royal power which was an absolute necessity for good government was lowered, and the door was kept open for the evils of uncontrolled feudalism to creep in.

Its real importance.

The real importance of Magna Charta lay not so much in what it wrote down as in what it stood for and resulted in. It inaugurated the principle of the Rule of Law and that the king is not above the law of the land and liberties of the people. A code of law containing the rights of classes and communities was recognised as binding on the king. If he disobeyed he could be compelled by force to observe it. To this charter Englishmen in their later struggles with kings for liberty appealed. Its enunciation of the right of rebellion was the greatest contribution of feudalism to the English constitutional development. It was the first legal restriction on the royal absolutism. However selfish and feudal might have been the demands of the barons, yet the result was in the best interests of the country. Another feature of importance is that it was a practical document remedying actual wrongs. It did not enunciate any maxims of government or citizenship. It was the first written record about the

privileges of the crown and the barons in feudal matters. There was generally no vagueness about its clauses. It was a contract or a treaty between the crown and the barons and was extorted from the king, and there was provision for its enforcement.

Its use.

It became a powerful instrument in the 17th century in the hands of politicians. It gave rise in the political life of England to a new baronial party as against the court party of King's followers and advisers. The new barons whom the policy of Henry I and Henry II had created and the novi homines or professional class to whom they had entrusted the work of administration and justice had acquired a respect for law and order. They gradually became the representatives of the country's interests as against the tyranny and favouritism of kings. Though they still retained class consciousness they did not aim at the disintegration of the central power and their own personal independence. Even the wrong interpretations of the charter strengthened its value and exerted a great influence on the subsequent history of England.

Sheriff (1154-1216).

The sheriff was the local agent of the institutional absolutism of the early Angevins in matters of the administration of justice, the levy of taxation, the collection of revenue, the enforcement of feudal military service, and the summoning of local representatives to meet the itinerant justices of the king. His office was an integral portion of a centralised governmental organisation. In

Henry II.

the reign of Henry II sheriffs were not chosen from the high feudal baronage but from the class of Curial officials who were his own adherents. Most of the sheriff's powers and functions remained. The keynote of the Angevin government was local action through central guidance. He however lost original jurisdiction in crown pleas which now belonged to itinerant justices. But he was in charge of the appearance of parties before the justices, of inquests, of records of cases, and of a

number of other writs of jury, inquiry, order and procedure coming from the central government. He was the collector of all taxes and revenues. Itinerant justices who took precedence of sheriffs in local courts heard complaints against his misdeeds in his own country. The Inquest of 1170 inquired fully into his unjust exactions and receipts. From Henry II's time his powers began to decline. In judicial matters the Assize of Northampton (1176) transferred the duty of presentments of the Grand Jury to the itinerant justices alone. The Assize of Arms (1181) placed in the hands of the itinerant justices the duty of supervising the armour of the local fyrd. In the Iter of 1194 four coroners were elected to hold the pleas of the crown. They were forbidden to act as justices in their own counties. The process of municipal enfranchisement and the prevalence of private franchises had somewhat restricted the territorial limits of sheriff's power. In 1195 the duty of receiving oaths for the maintenance of peace was laid on the knights as conservators of peace (custodes pacis).

Richard I.

In John's time sheriffs owed their places to royal favour rather than to their feudal rank or local power, and were still important. They had to serve and execute a great bulk of judicial writs, to collect special impositions such as tallages and aids, to act as the purchasing and disbursing agent of the crown, and to carry out other orders and instructions of the king. In the Magna Charta (clause 12) they were given the duty of summoning the lesser tenants-in-chief. The clause 24 forbade the sheriffs to hold pleas of the crown. They could not act as justices in their own counties, but they retained the authority to punish petty offenders in the half yearly hundred courts or tourns.

John.

The development of towns is a feature of this period. Towns had grown owing to an increase in commerce. The king's financial needs and the increase of wealth

Development of towns.

of the trading classes led to the buying of charters of privileges and immunities by towns from kings and barons in relation to trade and government. London got its charter from Henry I. Henry II, Richard I and John gave charters of trade privileges and self-government to many towns in return for money. London became a collective popular seignory, that is, a commune or corporation, involving government by a mayor and aldermen representing city wards, and standing in the position of a great tenant-in-chief. The privileges were often those of freedom from tolls and imposts, from the jurisdiction of shire and hundred courts, seignorial courts and sheriff's control and of the right of election of their own magistrates.

CHAPTER VI

LATER PLANTAGENET PERIOD (1216—1399)

Henry III (1216-1272).

During Henry III's minority (1216-1227) the regency confirmed the Magna Charta in 1216 but omitted the clauses 12 and 60 because the king was a minor and therefore powerless for evil. There was a necessity of strong government and barons did not want limitations on themselves. Its confirmation and acceptance by the papal legate and William the Marshall who was the "rector regis et regni" (1216-1219) made it a permanent part of the constitution. It was reissued in 1217. In the third reissue of 1225 the change made was that instead of the words "granted with the advice of the council" we get the words "granted spontaneously and of our own free will". It ceased to be a treaty between the king and the barons and as such irrevocable, and became instead a voluntary gift from the crown which therefore could be withdrawn at the king's pleasure. The constitutional importance of the king's minority lay in the fact that, firstly it became evident that the king was not essential for government, and secondly, the conditions of regency led to the beginning of an *inner ministerial council* as distinct from the larger Curia Regis.

Hubert de Murgh the Justiciar.

From 1227 to 1232 Hubert de Burgh carried on the government as the justiciar or chief minister. He followed the policy of 'England for the English' as against that of the king favouring foreigners and the papal claims and exactions. He tried to restore the system of Henry II but failed. He fell (1232) on account of (1) the hatred of the barons whose power he limited, (2) the strong opposition of the papal party, (3) the feeling of dissatisfaction caused by the heavy

taxes he was compelled to levy for the king's wars, and (4) the jealousy of the great wealth he had accumulated. He was accused of mismanagement of finances and other frivolous charges. He was sacrificed for the king's policy and actions by the discontented barons. Thus a minister was held responsible for the king's actions.

Two parties.

From 1232 onwards king's personal rule resulted in the mismanagement of government and created great discontent. His heavy taxation, his foreign favourites, his disregard of charters and the rights of the English, his neglect of ministers and the papal interference and exactions were the chief causes of the baronial estrangement and opposition. As a result two parties arose in the country. The *royal or court* party based on the ideas of absolutism was supported by English and foreign favourites, and papalists. The *baronial or country party* based on the ideas of a feudal or limited monarchy controlled by a baronial oligarchy was supported by the barons and the clergy and followed by the commons. Both parties however regarded themselves constitutional.

His personal rule.

From 1234 Henry resolved to be his own minister and ruled through his own royal clerks and not the barons. He steadily eradicated every trace of independence in the administration. He appointed his own men as the justiciar, chancellor and treasurer. Policy, when it was not based merely on the king's wishes, was decided in his *private council* which was a small informal body of personal advisors chosen by and utterly dependent on the king, and consisting mainly of his chief civil servants, with a sprinkling of prelates, friendly barons and alien courtiers. The whole civil service was made entirely dependent and responsible to the king. It strove always to increase and enforce his authority. The local administration was the agent of royal absolutism. But personally he was unfit for this power and

responsibility. He uprooted all administrative independence, excluded the baronage from active participation in matters of policy and subordinated the church to his will and papal claims and exactions. He gave high and lucrative positions in the church and state to his loyal servants and alien courtiers. He attempted no reforms for the welfare of the people.

Rise of opposition.

The harsh insistence on crown rights and the utter disregard of the wishes of the baronial party led to the baronial opposition and civil war. Barons were determined to maintain their powers and privileges. They demanded the appointment of ministers acceptable to the Commune Concilium. His support of papal claims and heavy exactions in the matter of livings and taxes in order to secure his own foreign objects and political ambitions alienated the clergy. A strong national consciousness arose in the country against foreigners who absorbed a large amount of money and power, and constantly surrounded the king. His failure in home and foreign policy and his military failure were responsible for the baronial war. The finances of the country were exhausted by his personal waste, grants to favourites and heavy expenses on campaigns and on foreign ambitions.

Baronial demands.

The baronial opposition was partly selfish and partly constitutional. They were supported by Grossetête, Bishop of Lincoln and Simon de Montfort. The constitutional problem was how to check a despotic king who did not keep his promises. The institutional control given in the Magna Charta clause 60 was eliminated in its reissues. Rebellion was the only remedy left. In 1238 a plan of reform was presented and Henry undertook to act according to a chosen body of counsellors. The scheme failed. In 1244 Henry was in need of money and summoned the Common Council. The barons demanded the appointment of a ministry consisting of a justiciar, a chancellor, and a treasurer by the council.

The king was to be responsible to them. The same demand was repeated in 1248 and 1255 without any result.

Causes of the Civil War.

The immediate causes which led to the Civil War of 1258-1267 were the famine of 1257 and the demand of the one-third of the revenue of Engand for the sake of the Pope. The barons rejected the demand, in the council held at London (1258). They complained of the favour shown to foreign favourites, interference in ecclesiastical elections, illegal exactions of feudal services and the abuse of purveyance. The king agreed that a body of twenty-four counsellors, to be chosen in a parliament (council) at Oxford, half by himself and half by the barons, should inquire into their grievances and determine reforms.

Provisions of Oxford.

The 'Mad' Parliament of Oxford met (1258) and the barons presented a long petition stating the reforms they desired. The council of twenty-four was elected, and drew up a body of preliminary articles known as the Provisions of Oxford. Under these (1) a council of fifteen was chosen, by four out of the twenty-four, to advise the king on all points; (2) another body of twenty-four was appointed to treat specially of aids; (3) a body of twelve was chosen by the barons to meet the council of fifteen three times a year and this body was to constitute the parliament; (4) the castles of the king were placed in the hands of Englishmen; (5) the justiciar, the chancellar and the treasurer and sheriffs were to hold office for one year only and then to give an account of their work; (6) aliens were to be expelled and royal castles were to be surrendered. The king proclaimed his adhesion to these provisions.

Provisions of Westminster.

In 1259 the barons produced at Westminister a second series of provisions in pursuance of the plan initiated at Oxford. They were ratified by the king. They related to the removal of the special grievances of barons as regards their feudal privileges, obligations and courts. One clause exemp-

ted from suit and service at a feudal court all tenants who were not made expressly liable by the terms of their enfeoffment. Another forbade private lords to entertain appeals from the courts of their tenants, enacting that all appeals should go before royal courts.

Their character.

The baronial scheme of government was entirely oligarchical and was intended to supersede the monarchy. There was no place for other classes of people. The baronial party was not interested in the common welfare but in the privileges of its own class.

But the baronial party got split into factions. One led by Richard de Clare, Earl of Gloucester, the brother of the king, was satisfied with the expulsion of foreigners, was not anxious for reforms, and had no sympathy with the lesser feudal tenants or towns. The other led by Simon de Montfort advocated reform and were in sympathy with other classes' rights. Simon's opponents went over to the king's side.

The Civil War.

In 1261 Henry obtained absolution from the Pope and repondiated his oath to keep the Provisions of Oxford. The royalist party was led by Prince Edward and grew stronger by accepting the Provisions in 1262 and by the adherence of a section of the nobles. By the *Mise of Amiens* (1264) Louis IX to whom the dispute had been referred for arbitration annulled the Provisions. This led to the Baron's war. In the *Battle of Lewes* (1264) Simon defeated the king. By the *Mise of Lewes* laid down (1) that the king's council should be elected by a board of arbitrators composed exclusively of Englishmen, (2) that the council should guide the king in the appointment of ministers and the execution of justice; (3) that the discord between the king and the barons was to be settled by arbitration; (4) that native (English) counsellors alone were to be appointed by the king; (5) that the charters should be inviolably observed, and (6) that Prince Edward and his cousin were to be hostages for the peace. Then a

parliament was summoned (1264), to which came four knights from each shire. A new scheme called *"a form for the government of the king and kingdom"* was drawn up and approved. By it (1) the king was given a council of nine without whose advice he could not act, (2) the council was to be appointed by three electors whom the barons were to choose, and (3) the appointment of ministers was to lie with the king. This scheme did not prove acceptable to all parties. Barons began to quarrel. In 1265 Simon summoned a second parliament which consisted, in addition to barons, lay and ecclesiastical, two knights from each shire and two burgesses from each borough. These were his partisans. But Edward's escape and the quarrel between Simon and Gloucester recreated the royal party. Edward became its leader and promised to maintain the charters and the provisions. Simon fell at Evesham in 1265. But the baronial opposition was not defeated till 1267. The Parliament of Marlborough (1267) re-enacted the charters and the provisions of barons in the form of a statute. After that Henry III reigned peacefully from 1267 to 1272.

Results of the struggle.

The results of Simon's struggle were (1) the resistance to the unconstitutional power of foreign favourites and their expulsion, (2) the opposition to papal interference; and (3) the legacy of a representative parliament. He had the welfare of England at heart and supported the commons against selfish barons.

Weakness of the Barons.

The barons did not succeed because the feudal system was decaying and was not suitable in the matter of legislation, judiciary, military and finance. Better central methods were adopted and had taken root. Kingship had become an office and a sacred trust. Its chief interest was to look after the interests of the community as a whole, and not of one class or the other. But the baronial opposition left a tradition and precedents for controlling the king who would try to become tyrannical and unconstitutional.

England required good laws and strong government. The objects of Edward I (1272-1307) were the establishment of good laws, and the union of British Isles under the English King. He gradually took keep the position of a national king by depending on national support. He carried on the work of Henry II by asserting the royal supremacy over the church and feudal barons and abolished the importance of tenure as an element in politics. He recognised the importance of associating the commons in the deliberations of the council. He was a great legislator. Stubbs described his reign as a period of "definition". He attempted to define the functions of every part of the state, that is, the rights and duties of classes by his various measures, namely, the Distraint of Knighthood (1278), the statutes of Westminister (1275 and 1285), the statute of Quia Emptores (1290), the recognition of the commons (1295), and the confirmation of the Charter (1297).

Edward I. His policy and work.

He consolidated the royal power over the barons by regulating the baronial franchises. In this connection he passed in 1278 the *statute of Gloucester* which provided that itinerant justices should inquire, under the writ of *quo warranto*, by what warrant or title the franchises were held. He wanted to abolish private jurisdictional rights which were not based on a royal grant. Very few franchises were however abolished, though their future extension was prevented, and consequently baronial jurisdiction gradually decayed. As regards the baronial estates the clause *"de donis conditionalibus"* in the second *statute of Westminister* (1285) ensured the succession of the heirs of the original family to their estates which might have been granted conditionally to other holders. It thus checked free alienation of estates by limiting the original holder's right of disposition. These estates therefore came to be called *"entailed"* or

His legislation.

Control over feudal interests.

limited estates. This statute tended to make permanent the old system of landholding and was thus reactionary in character.

In 1290 the statute of *Quia emptores* forbade subinfeudation by laying down that "in all future transfers of land, the purchaser instead of becoming the feudal dependent of the alienor, should enter into the same relations in which the alienor had stood to the next lord." The object was to prevent loss of services and feudal profits to the lord, and especially to the king by subinfeudation. This measure weakened feudalism and strengthened the royal power by increasing the number of tenants-in-chief holding directly of the Crown. It also facilitated the transfer of land and gave opportunities for acquiring landed property to great merchants. The *Distraint of Knighthood* (1278 and 1297) forced all owners of estates worth £20 per annum to be knighted. The statute of Westminister III or *Quia emptores* (1290) and the Distraint of Knighthood resulted in the rise of a class of country gentry, a non-baronial land-owning class which tended to support the royal power against the barons.

Control over the clergy.

He also consolidated the royal power over the clergy. The Archbishop Peckham had asserted the rights of the church courts as guaranteed in the Magna Charta. The king by passing the *Statute of Mortmain* (1279) forbade the grant of land to any corporation lay or ecclesiastical in such a way that it "should come into the dead hand". The church being a corporation never died and lands alienated to it escaped payment of certain feudal dues, particularly reliefs, and considerable loss was thus inflicted on the lord, especially on the king. Landowners had also frequently avoided the payment of reliefs by the frequent conveyance of land to the church. The consequent increase in the property of the church made it too powerful, and it was essential in the interests of the royal authority that this power should be curtailed. In 1281 the archbishop tried to

extend the power of the church courts and to take all suits respecting patronage and the personal property of the clergy out of the jurisdiction of the royal courts. The king prevented this. He issued in 1285 a writ "*circumspecte agatis*" (mind what you are doing) which defined the power of the ecclesiastical courts, and confined their jurisdiction to matters purely spiritual, such as questions of marriage, wills, titles, and offences for which penance could be enforced. This limited the extent of clerical jurisdiction.

Definition of royal power.

The royal power itself was defined by the *first statute of Westminister* (1275) which provided that elections to churches should be free and that feudal aids should be reasonable in amount. The legal settlement of the customs on wools, woolfells, and leather (1275) by the Commune Councilium called "magna et antiqua custuma" led to the limitation of the royal power of exacting taxation from English merchants, although it did not prevent the king from obtaining an additional grant if the merchants were willing to make it, and although the king's power of extorting money from foreign merchants was not limited by the settlement.

The *second statute of Westminister* (1285) re-enacted the statutes of Gloucester, Mortmain and others, limited the abuses of manorial courts by regulating the system of itinerant justices and settled the law of the land by the system of entails.

Maintenance of Peace.

The maintenance of peace was regulated by the statute of Winchester (1285). It laid down that (1) there should be the prompt pursuit of criminals (hue and cry), (2) the inhabitants of hundreds and franchises were to be answerable for robberies committed within their borders (watch and ward), (3) in towns gates were to be closed from sunset to sunrise, watches to be kept during the night, bailiffs to make inquiries about strangers (watch and ward), (4) in the country high-

ways were to be widened, and (5) there was to be revival of the Assize of Arms of 1181. Every man between the ages of 15 and 60 was to have armour according to his rank, a view of the armour was to be made twice a year by two constables in every hundred and to present defaulters to justices assigned for the purpose who were called 'conservatores pacis'.

Judiciary.

He also organised the judiciary. In 1285 the statute of Westminister laid down that two judges should try *cases* at Westminister thrice a year *unless* they had *before* (*nisi prius*) been taken on circuit in the county courts. In 1293 England was divided into four circuits, each with two judges called *justices of assize*. They were to take all assizes criminal and civil, and to sit throughout the year. In the twelveth century one set of justices tried all cases. In the thirteenth there were justices in eyre for general cognisance, and justices of assize for working Henry II's assizes only. Justices in eyre ceased by the time of Edward III and justices of assize took their place. The eyre for general business used to be septennial up to Edward I's time. Edwards' arrangement was a great convenience to suitors owing to the increase in judges, the decrease in expense, the settlement of all kinds of cases and the permanence of the commission.

Central Courts.

There was also the development of the central courts of justice. The Curia Regis had thrown off three courts by the time of John, namely, the *Court of Exchequer* the *Court of Common Pleas* whose judges were the early *justices in banco* sitting at Westminister and the *King's Bench* whose judges were the early *coram rege* judges who heard cases wherever the king happened to be. Suitors would be summoned before any of these two bodies of judges at the king's will. Either body was competent to hear alike common pleas and pleas of the Crown. Still a cleavage was taking place in John's reign. The Magna Charta stated that

the *Common Pleas* should not follow the king but be heard in a fixed place. This meant that some permanent tribunal should be appointed in a definite place to which private litigants could bring their cases with some assurance of finding judges to hear them. But during Henry III's minority there was only one judicial body of the justices of the bench sitting at Westminister to hear all kinds of cases. When he came of age, he began to do justice in person with the aid of his judges and members of his council. From 1234, instead of there being one set of 'de banco' rolls for entering all the pleas, those heard by the judges with the king, the 'placita quae sequuntur regem' were entered on separate 'coram rege' rolls. Then we get two sets of rolls. (The Court of Common Pleas became definitely organised under Edward I when the judges of the court obtained a permanent organisation under a chief justice of their own, and they were no longer allowed to hear pleas of the crown in any shape. For, sometime after, the 'Coram rege' court continued to be indistinguishable from that of the king's council itself. But after 1290 it began to sit separately as *King's Bench* of professional judges and the king's council or afforced court obtained its own rolls known as Parliament rolls in which cases tried before it were entered. The *Court of Exchequer* also underwent changes. At first it was merely a "phase of the general governing body of the realm" and had as its members all the governing of ficers of the state. Then it gradually became a judicial and financial tribunal. From the time of Henry III the treasurer became its president, and men were definitely appointed to be barons of the Exchequer. Its chief work was to collect the king's revenue and judge revenue grievances. It had its own rolls called Pipe-rolls. Thus these three courts were further organised. Each received its own personnel or staff of judges. Their functions were clearly defined and separated. Through their influence the common law and its procedure were reduced to one uniform system prevailing over all local and class peculiarities

and became in time a bulwark against the encroachments of the Crown.

King's equitable jurisdiction.

Then there was the growth of the king's equitable jurisdiction. The king's council used to examine and remit to the proper courts petitions against judgments of the common law courts. From the time of Edward (1290), after the abolition of Justiciarship, *the chancellor,* who was the head of the office from which were issued the writs through whose operation the royal justice overrode the private jurisdictions, began to deal with the petitions over which the common law courts had no jurisdiction.

The Court of Chancery.

It was however under Edward III that the Chancery was established as a separate court. It was the king's prerogative to do justice to every man. The chancellor at first exercised his jurisdiction in the king's council of which he was the president. Under Edward II he began to sit regularly for judicial business. The *king's council* still retained its judicial function as distinct from administrative and conciliar function which was to give him counsel and carry out his policy. The king always reserved a certain amount of jurisdiction to himself and his councillors. Out of this developed the jurisdiction of the House of Lords.

The Chancellor and the Secretariat.

In the beginning the chancellor was as it were the general secretary of the Curia. He directed the office of charters and writs and was the head of the clerks who conducted and maintained state correspondence and records. He also kept the royal seal. There was then no separate secretariat. It was a part of the royal household. The household clerks worked at the exchequer of the Curia as well as at the chapel, chamber and wardrobe of the household. The chancellor was an officer of the household and worked also at the exchequer. He rendered accounts to the wardrobe department and was at the time of Henry II an officer below justiciar and treasurer in rank.

He grew in importance under Henry II when the forms of judicial and administrative procedure grew. It was he who issued writs, charters, and letters patent and close under the royal seal which were paid for. In the reign of Henry III the royal seal became the great seal. Nearly everything emanating from the crown ultimately took the form of a document drawn up in the chancery and sealed with the Great Seal. Actions in the king's courts were begun by a writ from the chancery. Many of these writs were issued in answer to the petitions to the crown. Many of them could be answered when the king was surrounded by his councillors or in other words when he was holding his parliamentum or colloquy. In 1280 and 1293 arrangements were made for the sorting of all the numerous written requests which were preferred to the Crown on all kinds of matters and for the reference of the most important of them to the king in council. After the abolition of the justiciar the chancellor became the president of the council and many of these petitions were decided by him. Under Edward III chancery became a separate court (1350). It had become separated from the household in the reign of Edward II. All matters of grace where the exercise of the king's prerogative was concerned were referred to him because parliament ceased to deal with private petitions. Matters of grace also went to the king's council. It came to have its own rolls of chancery. The chancery ceased to be the general secretariat of the state in the fourteenth century. It created new writs to meet new cases, and its own procedure and jurisprudence.

The confirmation of Charters.

In 1297 the king wanted to raise money and to collect forces for his wars. Under the influence of Boniface VIII's bull, Clericis Laicos (1296) forbidding the clergy to pay taxes to any lay power, Archbishop Winchelsea refused (1297) to agree to a grant of one-fifth demanded by the king. The clergy in consequence were outlawed. The Arch-

bishop excommunicated his opponents. The king seized the church property. This led to discontent amongst the clergy. The barons were also discontented owing to the growing power of the king and his disregard for the Magna Charta and the Charter of Forests. In the assembly of the barons held at Salisbury (1297) the Constable Bohun, and the Marshal Bigod and other barons refused to serve abroad and would not grant money. Edward therefore took money and supplies from the merchants without consulting anybody. He seized wool and hides of the merchants and levied a heavier tax of 40 shillings per sack of wool. It was a maletot or unjust tax. He also took stores of corn and meat from the counties. Thus he displeased all classes. The clergies were however reconciled and made the grant of one-fifth. The Constable and Marshal presented on behalf of the barons and the "whole community of the land" a petition protesting against the unconstitutional demand for foreign service, the violation of the charters, and the maletot and demanding that the king should remain at home. After the departure of Edward for Flanders (1297) they forbade the exchequer officers to collect supplies until the Magna Charta and the Charter of Forests were confirmed. They denied the legality of recent grants, and demanded that grievances should be redressed before supplies were granted. Prince Edward who was the regent confirmed the charters and accepted the additional articles in the petition. The king confirmed his action. The additional articles provided that "no aids or prises (as those recently taken) should be taken without the common consent of the realm." The king's rights to the "ancient customs" on wool were expressly reserved. It was a great constitutional victory for the barons.

Sheriff (1216-1307).

By 1307 the sherifl became more the holder of an office the activities of which were directed by fixed rules and forms under the control of the chancery, the exchequer

and the justices. His purely military functions were taken away, so also his large discretionary powers. He lost much of the appearance of immediate subordination to an absolute king. Additional duties which fell upon him were the holding of various elections which dated from 1194. These elections related to the making up of lists of jurors for presentment, to knights who were to assess and levy a carucage, to knights to be sent to Westminster to make a grant or to assent to a policy on behalf of the community of the shire. The local constitution was, however, weakened by a systematic centralisation and expansion of the powers of central government. Its vitality was lost by the end of Edward I's reign. It became ineffective and could not meet the new dangers to peace, order and justice in localities which were harassed by the baronial system of livery and maintenance growing rapidly. It was only by retaining sheriff's strong police powers and the development of new courts and justices of peace and their powers under the Tudors that order was again restored. Sheriffs still did most of the executive work of the central government in localities regarding inquests, peace, police, writs, orders, summons, regulation of trade, castle-building, control of the posse comitatus (the whole force of the county), prisoners, prisons, etc. Thus his initiative remained as far as the preservation of peace was concerned, but special conservators were being appointed to keep the king's pleas. King's court had diminished his importance in the shire court. His position was to help them and to carry out many royal orders or writs. Other officials however entered the field which he had once occupied, such as the custodians of peace, the commissions of array and the special collectors of revenues. By 1307 the powerful sheriff of the Norman and Angevin periods became a sheriff of limited authority who was ruled by writs in matters of finance, justice and peace and in his executive functions.

The court of the Norman kings was a continuation

of both the 'Witanagemot' of Edward the Confessor and the Court of the Dukes of Normandy called 'curia ducis'. Both had almost the same permanent officers and the same varying personnel of barons and bishops and the same powers. The curia was a vague and indeterminite body with changing aspects. But it was indispensable and existed. The king was the centre round whom his faithful and wise men gathered for counsel. Without his presence there could be no court. But when he held his court he was not bound to summon any particular persons. It had no fixed rules or composition. It proceeded from him. No one had an inherent right to be a king's counsellor. It primarily helped the king in doing justice. This old duty of counsel on the part of the wise men and officers who were summoned was strengthened under the Normans by the feudal duty of the tenants-in-chief to do suit and service.

Concilium or Curia Regis.

Its nature.

The court (curia) of the Norman kings was on occasions large and formal and generally consisted of a small group of familiares and able persons. The king summoned whomsoever he liked from amongst his relatives, officials, personal friends, churchmen, barons and even passing guests. The curia or consilium Regis therefore met in two ways. The enlarged curia or *concilium generale* and the restricted curia or the *curia regis* proper. They were the same body. In the 11th century it was styled indifferently consilium or curia regis. The court or council was primarily an administrative organ and a court of justice. Great cases and public business generally came before it. It was generally consulted on questions of peace and war, alliances and royal marriages. From the standpoint of feudal law and of divine right theory the consilium or curia of the Normans was not any organ of control but a mere instrument of personal government. The body did not

Its composition.

Its functions.

assemble at any fixed times or possess any fixed character.

The Royal Household and its place in the central administration.

The king's household (Domus Regis) was the executive agent of the royal will and the regular organ administering the royal exchequer and justice. Its chief officers were the justiciar, the chancellor, the treasurer and the marshall. It comprised the entire group of services attached to the person of the king, such as stewards and clerks and consisted of the wardrobe, the bed chamber, and the chapel. The chancery or secretariat was also a part of the household. The general work of administration, finance and justice was managed by these household departments which had their own trained clerks. The heads of the household—the Justiciar, the treasurer and the chancellor—became the heads and members of the courts of exchequer and justice especially from the time of Henry I.

The meaning of Curia Regis.

The Curia Regis had different meanings, though it generally meant any assembly held by the king in which he was present. (1) Under the conqueror it was the *king's court on a drawing-room* day when all tenants-in-chief were present and when it was primarily a feudal assembly. (2) Under Henry I it was the *king's court on an ordinary day* when all the household officals and clerks were present and where financial and judicial work was done. (3) It was also the *special larger gathering* to which the king summoned occasionally at his pleasure, in addition to his familiares, other lay and ecclesiastical barons for consultation in administrative, judicial and financial matters. This last or concilium generale was a reinforcement of the household working as a Curia Regis in a restricted sense. The restricted Curia Regis was an executive and judicial body. The enlarged Council was a consultative and advisory body.

Under Henry II when financial and judicial courts

were further developed, the Curia Regis became the chief central court and the household officers its chief judges. When it began to develop the system of itinerant courts and the courts of Exchequer, Common Pleas, the King's Bench and Chancery their judges came from these household judges who were royal servants. But this judicial work of the Curia Regis was extraordinary. It did not become its general business till the time of Edward I. Moreover the Household ministers or justiciars alone had not the duty of attending to the business of the restricted Curia Regis. Every royal tenant-in-chief was obliged to attend if summoned by the king. The king sometimes summoned them, because the business done often related to his feudal rights over these tenants. Thus it was sometimes a feudal court but generally a court doing the usual business in matters of administration, finance and justice. The judicial work was confined to appeals from local courts and to the placita regia. Henry II extended its judicial scope and jurisdiction under the system of writs, possessory assizes and the system of central and itinerant courts. Later, it became the chief judicial organisation with its various courts working for the whole realm, and superseding the old feudal and local jurisdictions.

Curia Regis under Henry II. Its branches.

Its scope of work.

Thus the restricted Curia Regis was the king's small council containing mostly the chief officers and other members and clerks of his Household which looked to his administrative business regularly and who accompanied him wherever he went and devoted their time and energy continuously to his business. Its powers were just as great as those of the Council or Court when it was afforced by additional members, the reason being that powers were the king's and not of the members of the Council. Therefore the Curia Regis and Concilium Generale were identical in everything except in size. The smaller council was

The restricted and the enlarged Curia Regis.

not a committee of the greater council, and even when it sat as a court ad scaccarium, in banco, coram rege or in eyre, it was a session of the Curia Regis itself. In it other officers or barons could be asked to sit to decide all cases in the same manner. The Curia Regis courts developed a fixed procedure and routine. The Curia or Consilium Regis itself, however, continued to be an indeterminate body consisting of the king's administrative and judicial officers and others sitting in his presence. It was the centre of all government initiative, it co-ordinated the work of different bodies, and possessed a universal competence. It had no differentiated or restricted powers, because in it the royal prerogative was exercised. It continued to institute new writs and to meet new juridical needs by using its equitable jurisdiction and to make new laws by passing ordinances. The enlarged or general form was known in the beginning as Concilium Generale or Commune Concilium or later as Council in parliament.

The restricted Council.

The Concilium Regis was essentially a high court of justice both for feudal and national purposes. In it knights and burgesses rarely appeared except as petitioners or pleaders. The king could consult whomsoever he pleased. It had no fixed personnel or organisation. It did not become a rigid body by tradition. Its business in the domain of justice was to redress administrative grievances or judicial errors and to remedy the insufficiency and the imperfection of common law and administrative custom, and to judge in appeal cases and in cases concerning high offenders. It was the master of its own procedure, writs and seals. In financial matters it evolved new financial methods such as customs and impositions. In legislative matters it issued ordinances and suspended or dispensed with laws. To settle the general policy of the government was its chief function.

Its two forms.

During the eleventh and twelfth centuries the composition of the council took two forms. Usually it contained king's familiares and the great administrative officers of

the curia. Occasionally some barons were added on to it. If the barons were numerous it became an enlarged Council or Curia.

The enlarged Council.

This enlarged or afforced Council was called the Council in Parliament under Edward I. Before that it was generally known as the Concilium Generale or Commune Concilium. When it was not enlarged but contained a few barons besides the great officials and the familiares, it was called the king's Court in Council. The king's Court was merely the king and his familiares and ministers. But these various names were indiscriminately used so that the names king's Court, and the king's Council, were often used for each other. The Parliament or the Commune Concilium generally meant the full or enlarged or afforced Council. Attendance at the Court was an obligation on the barons but not their right. Thus we may say that the councils were of three types. Firstly, that to which the king called the sworn counsellors of whom some might be barons was the *ordinary* or *continual council*. Secondly, that to which he called in addition, a more or less considerable number of barons by writ of privy seal, was not however at first much distinguished from the *ordinary council* but later was called the Commune Concilium. Thirdly, that to which he convoked barons and others by the writ of the great seal was called the *Council in Parliament*. It was before this third type that the commons were summoned from time to time in the 13th and later centuries. In the fourteenth and fifteenth centuries it was called Magnum Concilium and in the sixteenth, the House of Lords. The king used to summon on occasions of festivals or as circumstances required great barons and also other persons. But the *commune concilium* or the great curia did not exist as any particular institution as Stubbs thought. Only voting of an aid required the baronial presence. The small curia of familiares could not bind the barons in such a case.

When summoned.

The great curia came to be a recognised separate body when

regular scutages and aids began to be levied regularly. Barons claimed it as a right that any extra aid or scutage could not be levied without their consent. The enlarged Curia was not a national assembly. It was only very slowly that it was distinguished from the ordinary Curia. William I in his ordinance separating the spiritual and temporal courts says "I have by my common council and by the advice of all archbishops, abbots, and chiefmen of my realm determined." He is also reported to have said before he started his Domesday Survey, to have had very "deep speech with his witan." The function of this Great Council was to

Its business.

advise the king in matters of policy and legislation whenever the king asked for its counsel. His laws state 'I ordain,' 'He willed.' Its advice was asked generally when the customary laws and dues were changed. William I wore his crown thrice a year, and according to *Gneist* these occasions were Norman court days for magnificence. The assemblies on these days were neither for administrative nor feudal work. But their counsel might be taken for extraordinary work or policy which the king wanted to undertake. Its composition was not fixed or confined to any class. It contained the barons, the bishops and other magnates and ministers of the realm whom the king invited.

The Norman and Angevin kings called it for granting extra aids, for passing important new legislation, for deciding judicial cases of great import, and for discussion of matters of political and feudal importance. Henry II consulted it constantly in passing his assizes "with the assent of bishops and barons of all England." John in 1207 issued a writ for the assessment of the Thirteenth as an aid "by the common advice and assent of our council at Oxford." In 1215 the Magna Charta laid down that without its consent no scutage or aid was to be levied except the three royal aids, and it was to be composed of bishops and greater barons summoned individually and smaller barons summoned generally through sheriffs. It was

to be an assembly of the tenants-in-chief and ecclesiastics. It was thus a primary and not a representative assembly, a class and not a national assembly, and a tenurial and not a territorial assembly. But it was not merely a court of feudal suzereign dealing with feudal cases of land and service, but also a court of a national sovereign containing professional judges and clerks and dealing with the cases of his subjects and with his own royal pleas.

The Ordinary Council under Henry III.

The Ordinary Council, also known as the Continual, Permanent or Privy Council may be traced to the year 1178 when a circle of king's chief ministers, counsellors and judges in the presence of the king, began to hear appeals from the court of five justices or decided more difficult cases of finance and law. This body was an organ of the king's prerogative and the remnant of the Curia Regis. A reserve of power was always held to lie in the king and the whole Curia. It was not however a regular body. It began to be a separate and organised body in the minority of Henry II doing all administrative work as the Council of Regency. It contained the great officers and ministers of the realm. From 1234 to 1258 Henry III used it as his inner or private royal council of government. It was distinct from the great Curia. It was completely dependent on him. It contained his counsellers and ministers and performed general administrative and advisory functions.

Its work.

It exercised the residual personal jurisdiction of the king in original and appellate cases. A large number of petitions came to it. These petitions were allotted to proper courts and bodies for being dealt with . Those which remained were referred to the chancellor for consideration. He was the keeper of the king's conscience. His equity jurisdiction arose to meet cases for which there was no remedy under common law. But cases of administrative or feudal importance were decided by the Council itself. In the reign of Henry III attempts were made by the baronial

party to appoint councillors to the king's Council in 1244, 1258, and 1264. The baronial party and Parliament later on tried to prevent the encroachments of the king's Council into the authority, jurisdiction and functions of the regular courts and institutions which had developed out of the Curia Regis in matters of legislation, judicature and taxation. But it was the centre of initiative and of co-ordination of work from the beginning. It created new institutions and adopted new methods when the old ones did not suffice the royal or realm's needs. Its personnel was not fixed. It discussed matters freely and made innovations to meet various new needs of the society to redress grievances and to remedy the insufficiency and imperfections of the common law, administrative custom, financial expedients and statutory law. After the reign of Henry III it continued to do this work and under Edward II it became established as part of the machinery of government. Under the Edwards (1272-1377) it had become an enlarged and heterogeneous body, consisting sometimes of one hundred or more members. Generally it contained great officers of the state and household, judicial staff of the Council, a varying number of bishops and barons and simple conciliarii who had no official or baronial qualifications. In Richard II's time (1377-1399) it formed a narrow and more homogeneous body of members from ten to fifteen. Its proceedings were secret. Its work was to assist the king in the execution of every power of the crown which was not exercised through the machinery of the common law institutions. In the reign of Edward III after 1350 the Council created a separate court of Chancery for equity cases. In 1453 an Act of Parliament gave it power to deal with all cases which were beyond the region of the common law. By the time of Henry VI the king's Council became very large and unworkable. In his reign after 1437 a smaller and more compact administrative body known as the *Privy Council* split

Its development after Henry III.

off from the Ordinary Council. He appointed its members himself.

The Ordinary Council and the barons.

Till the middle of the twelfth century there was no conflict between the barons and the familiares (personal followers and household ministers) who composed the king's Council, because the great barons were often the great officers. The king did not exclude them, nor did the barons want to exclude the professionals from the Council. But causes of conflict arose from the time of Henry II. The royal policy as regards army, justice, finance, and administration was anti-feudal. The importance of the Royal Council grew. The familiares increased in importance and in numbers and excited the distrust of the barons. They were the indispensable and dependent instruments of the royal will. New common men or upstarts, who were lawyers and foreigners monopolised king's favours and became barons and bishops. Therefore the old feudal barons began to attack the king's regular councillors from the thirteenth century. They raised an outcry against foreigners and claimed the feudal right of being the natural counsellors of the king based on the duty of service. They wanted to drive away the familiares (favourites and functionaries) from the Council or at the most to recognise them merely as professional advisers, and wished to form themselves the Ordinary Council. They wanted the power of appointment of the members of the Council, and especially the chief ministers of the king and the privilege of membership and ministership to be confined to their own class. From the 13th century the king and the barons contended in the Council for the control of government. The Council became the battleground of the royal and baronial parties. Round it the constitutional struggle raged. The barons wanted it to be a public committee of the Commune Concilium. The king wanted to keep it as his own private Council dependent on him. When the king happened to be strong and popular the Council

Under Henry III.

was fully under his control and contained his familares in greater numbers, but when he was a minor, or weak or unpopular, the barons used to dominate in the Council. Henry III excluded the barons who had opposed his father and surrounded himself by favourites and foreigners. The barons demanded the appointment of sworn counsellors and ministers to the king's Council and made a number of attempts from 1234 onwards, but failed. Their achievements from 1258 to 1265 were also ineffective after the royal victory in 1267.

Under Edward I.

The king chose his own counsellors. Edward I did not fix the number of his sworn counsellors and added to them counsellors who had not taken the oath. Its composition remained variable. The permanent nucleus of the Council was composed mainly of the chief officers, justices and clerks of the Curia Regis and the Household, in all about 30 to 35 persons. Edward added to these some confidential agents. Sometimes some magnates were summoned to it expressly by a writ issued under the privy seal. But essentially it was the assembly of his familiares.

Under Edward II.

Under Edward II the Council contained king's familiares. The Lord's Ordainers of 1311 established no plan for choosing the Council, but only required the exclusion of 'evil' counsellors and the appointment of the fit and proper persons to the Council and great offices. Amongst the familiares themselves a reformist party of professional administrators had arisen and began to influence the working of the Council even in opposition to the king. Edward III gradually freed himself from baronial interference and followed his father's policy in creating a council of familiares and docile barons and later on restored co-operated between them and the barons.

Under Edward III.

In 1377 under Richard II the Council became the Council of Regency appointed on the advice of lords in Parliament. It got its commission by letters patent and became

Under Richard II.

a definitely determined institution. But from 1380-1387 Richard controlled it and filled it with his friends and officials. The barons were very occasionally summoned. During the period of his absolutism (1397-1399) it was under his complete control. After 1399 the barons remained the masters of the Ordinary Council and excluded the curiales or functionaries of the Curia and the familiares of the Household from sharing in the deliberations of the Council. They also excluded the lessor nobility and the knights of the shire.

CHAPTER VII.

THE ORIGIN OF PARLIAMENT.

Communitas was the basis of the social organisation of the English people. Social groups were formed on the principle of class constituting an estate and on the principle of locality constituting a shire or town. An estate was a condition or status of a group of men determined by birth, or landed wealth or profession. By the thirteenth century the word "communia" was universal in England. There was the community of the barons, of prelates, of knights of the shire, and of burgesses of towns. The guilds, monasteries, cathedral chapters, universities were all communities. The medieval state is a 'communitas communitatum.' There was however a tendency from early times to classify the people into three classes, bedesmen or oratores, fyrdmen or bellatores, and workmen or laboratores, and they were known as the three medieval estates.

Communities.

After the Norman Conquest we find the more precise definition and the more corporate action of these classes. Firstly, the clergy got separated into a distinct class on account of their religious work and the Papal and Norman policy. They got their own councils, and courts, laws and justice, and status. As a consequence of their independence and corporate action they became conscious of theirs being a separate estate with its own organisation.

The clergy.

Secondly, the baronial class existed from the Anglo-Saxon times. Thegns formed a separate nobility of service. After the conquest the introduction of knight service distinguished this class by its direct military service to the crown. The separateness of their estate became

The barons.

evident in their feudal privileges such as the membership of the Commune Concilium and the possession of private jurisdiction.

Thirdly, the commons or the third estate was the name for all who were left over. It did not become one single organised group. The commons were not in one moot but were getting organised in shiremoots and boroughmoots. They were called the commons not because they were composed of the common people but because they consisted of the communities of shires and boroughs. The shire communities existed in the shape of the shire-court. Its suitors formed the communitas. It was this body of suitors which possessed the seal and acted in a corporate capacity under its charter. The suitors were the judgment-finders in the county court. The sheriff merely presided and enunciated the judgment in a regular form of words. These suitors were collectively responsible for a false judgment to the king's court. If a writ of false judgment was issued by the Chancery against the shire court, four knights of the county had to bear the record of the judgment to the king's court at Westminster as representatives of the county. If the judgment was not satisfactory the county was liable to fine. The suit to the county court was a heavy burden. There were besides hundred courts and manor courts where attendance was necessary. The county court met once a month. Therefore suitors were those particular freemen on whose holding the suit had come to rest by custom or who had been specially enfeoffed to do suit to the county court. The suitors would include all conditions of men from knights down to virgate-holding villeins. Thus the shire court had a thoroughly representative character.

The Commons.

The shire communities. Its character and composition.

The shire communitas had police and military duties. In matters of police the sheriff had to exact an oath to keep watch and ward, and to raise hue and cry. In

Its functions.

matters of militia the sheriff had to see to the observance of the Assize of Arms.

In matters of administration the shire appointed committees of itself as, for example, in the Magna Charta (clause 48) an elected shire committee of twelve sworn knights was appointed to inquire into and to abolish all the bad customs concerning forests, sheriffs etc. In 1225 four elected knights went to complain of the sheriff on behalf of the county. In 1258 four knights were elected to hear complaints and to make attachments at every meeting of the county court.

In matters of finance two lawful knights chosen by the will and counsel of all of the county in full county court in 1220 were to collect two shillings from each carucate along with the sheriff for the king.

As a deliberative body the shire sometimes voted taxes and made laws. The king sent his officials to negotiate with the county for grants in the county courts. But it was not a regular taxing or legislating body. Thus the shire possessed a corporate character and a living reality in matters mentioned above. It was a living and natural constituency for a central parliament.

Toun Communities. Its character and composition.

Towns were largely centres of trade and enjoyed a special peace. They had three features, a market, a moot and a mint. In their markets alone could buying and selling take place. They had their special borough-moots or courts and special borough-peace and burgage-tenures. Like hundreds they paid Danegeld and other regular dues to the king which consisted of tolls, rents and fines. These were often consolidated into a lump sum called "firma burgi." It was separate from the firma comitatus."

After the conquest towns rapidly developed into self-governing communities. Their economic activities having increased on account of commerce some corporate action became necessary to regulate it. Hence

arose merchant guilds. In these guilds and borough-moots townsmen realised their consciousness of a town-communitas. The main objects of the guilds were the regulation of trade and the exemption from tolls. To secure freedom from tolls and other vexatious control or interference from outside they sought for charters. The system of guilds was not universal. In many towns they did not include all the townfolk. But in some towns there was often an identity between the guild body and the burgess body. The guild represented the economic side, and the borough-moot, the judicial side. In about 1200 the firma burgi came to be paid directly by the towns through their own bailiffs to the king's exchequer and not through the sheriff. The towns-people arranged the incidents of a member's quota and controlled the collection. Thus towns became a separate community in financial matters and paid each collectively the usual sum and extra-ordinary aids.

Its organisation.

At the time of the conquest towns had little, if any, powers of selfgovernment. Each man was under a lord and paid him predial services. The sheriff dealt with each man in matters of revenue due to the king. Towns people gradually secured immunity from the control of the manorial lord and the sheriff and obtained the management of their own affairs. Rich towns bought charters of freedom and privileges from the king or lord on condition of an annual payment or otherwise which liability the town had to bear in a corporate way. The guild economic organisation and the borough political organisation were generally separate. Richard I's charter formed an important epoch in municipal government. Charters were given earlier by Henry I and Henry II. Some times towns secured early the right of electing bailiffs and coroners as custodians of the pleas of the crown.

Before the conquest boroughs were presided over by reeves. They had moots. Laws of Edgar and

Canute mention that they were generally held thrice a year, unless it was necessary to hold them oftener. By 1200 town councils or bororgh moots were well developed. London was the first to attain self-government by the charter of Henry I. It got a firma comitatus, the right of appointing a sheriff and of having a stationary itinerant justice to try all crown places. Stephen gave it a municipal constitution. The town communitas possessed rights and property in common, a civil code and a constitution. The civil code defined the judicial fines, personal dues and tolls on commerce, and the constitution gave the mayor and the jurati who were to govern the town and to uphold the code. London got the right of electing mayor under Richard I. London became the constitutional model for other towns.

In their judicial aspect towns had courts or moots. The burgesses were the suitors or judgment finders. Lord's private jurisdiction had however encroached upon their sphere of jurisdiction by the time of Henry I. Borough people had peculiar legal customs and privileges in point of burgage tenure, villein status, sale and purchase of tenements, duel etc. Towns had in some cases separate courts and laws. They secured freedom from franchise courts and shire courts and exercised the rights of sac and soc on themselves. This extension of judicial liberties belonged to the reign of Richard I and John.

Towns in 1215.

The position of the advanced towns by 1215 was; firstly, they had a separate judicial existence from franchise and shire courts; secondly, they possessed peculiar laws as to burgage tenure, rights of personal freedom, compurgation and ordeal instead of duel; thirdly, they got accustomed to corporate action in the judicial sphere in the matter of electing coroners and twelve representatives to go to shire courts to meet itinerant justices; fourthly, they were largely self-regulated communities in matters of justice, having their own courts, law and

freedom; fifthly, they were commercially corporate bodies possessing freedom from other people's tolls, right to fairs etc.; sixthly, they were financially independent communities paying their own annual taxes (firma burgi) and negotiating their aids with itinerant justices; and seventhly many towns had the right of electing mayors. The word 'Commons, Communa, Communitas or 'Commonalty in England meant the representatives of the communities of the shires and towns, namely, the freeholders of the country and burgesses of the towns, though it was often indiscriminately applied to the nation as a whole, baronage, deputies of towns, the whole body of elected deputies as opposed to the great men summoned personally.

Composition of the Shire-Court.

The writ of 1231 for assembling the country court before the itinerant judges shows the exact composition of the shire-moot during the Angevin period. It contained all the elements that were found in the Commune Consilium at that time, namely, archbishops, bishops, abbots, priors, earls, barons, knights and all freeholders and in addition a reeve and four lawful men from each village, and twelve lawful men from each borough. Later on there took place a concentration of all the constituents of the shire moots in one central assembly under the name of 'parliament'. The shire moot was a miniature local parliament containing all the free elements in the population, attending in an individual capacity or as representatives. The Curia or Consilium Regis was not as we have seen a fixed assembly from the beginning in point of numbers and nature of its composition. Its members were chosen as counsellors by the king as he wished either from amongst his household officers and clerks alone or in addition from amongst the feudal barons and from amongst his favourities. The body was not purely official or feudal or private. Its main function was advisory in matters of administration,

Parliament. Its origin.

justice and deliberation. It met often in a small form to help the king in the continual executive work of government, when its members were usually household officers and clerks. It met occasionally on festival days or as circumstances required in a full form (called Commune Consilium) also to help the king to decide important matters of government, when its members were summoned from the official, feudal and other classes as the king wished. There was no limit on the king's choice nor any class had a right to be summoned. Vassals were under an obligation to attend when summoned. After the development of royal judicial and financial courts out of the small body, the word 'Consilium Regis' came to be used more and more for the small Curia Regis which attended the king and did its functions advisory and executive. The word 'Curia Regis' became confined more and more to the new royal courts or to the royal administrative departments whose members were royal functionaries. During the eleventh and twelvth centuries there was no fundamental difference between the ordinary small Consilium Regis and the extraordinary great or full or general Consilium Regis, called Commune Concilium. Only their size and manner of meeting differed. In the thirteenth century under Henry III the word *'Parliament,* came to be used for the great or full Consilium Regis. Fleta in 1307 says "habet enim rex *curiam* suam in *consilio* suo in *parliamentis* suis etc.," that is, "the king has his *court* in his *council* in his *parliaments* in the presence of the prelates, earls, barons, nobles and other learned in law, where judicial doubts are determined, and new remedies are found for new wrongs as they appear; and justice is done to every one according to his deserts."

Its meaning.

The word 'Parliament' meant a debate, colloquy or talk. It was at first used for a full meeting of the Consilium Regis or Commune Concilium, or the enlarged Curia for the purposes of consultation on matters of extraordinary

aids, policy, justice, or administration. But even a small body of twelve barons elected by the barons under the Provisions of Oxford (1258) to meet the fifteen thrice a year and to discharge the ordinary functions of the Great Council was called Parliament. It did not mean then what it means now a representative assembly. The earliest form of parliament is a parley of the Council. Any kind of consultation might be called parliament. The word has been traced as far back as the reign of Henry II. It was used by Mathew Paris, in the Provisions of Oxford, and officially from 1275 onwards. It was used for the meetings of the full Council before the knights and burgesses were summoned to attend or after they withdrew even if summoned. The assembly was even called full parliament after the earls, bishops, barons and knights and burgesses except the members of the council were dismissed. So the use of the word 'plenum parliamentum' for an assembly solely consisting of councillors shows that a session of the king's Council also meant parliament. The word 'parliament' therefore did not mean a particular institution or assembly but the deliberation or parley of the king in his Council or almost any sort of conference in which the crown was involved. Its size or subjects of discussion or members had no significance. The Council-in-parliament would mean a full deliberative session of the King-in-Council and not its meeting for executive purposes. Its deliberation was generally in judicial, financial and legislative matters which were the affairs of the realm. For the purposes of this discussion and deliberation the king might summon according to his needs and choice other persons in their individual or representative capacity to the sessions of the Council, but they were not its essential constitutional elements. Owing to his financial needs and political difficulties Henry III and Edward I began to unite the additional magnates and representatives but they had no inherent right to attend or to deal with the matters placed before them. Their absence did not vitiate or stop the proceedings and

sessions of the Council or parliament as it was then called. The 'Rolls of Parliament' which came into existence after 1278 and recorded the work done by these councils show its nature to be administrative, judicial and legislative. Mainly the business of Edward I's parliaments was to do justice regarding petitions and pleas which the commons brought to them in order to get redress for grievances which could not be remedied by common law or in any other way than a special process. Primarily therefore a parliament (that is, a session of the King-in-Council) was a high court of justice. The petitions were either of a difficult or a novel nature. This court was held in "coram rege et consilio suo ad parliamenta sua". It was a joint session of the justices of the king's courts and the members of the council.

As a High Court of Justice.

Mathew Paris and other writers used the term 'parliament' without any particular significance. It is also used vaguely under Eward I. To clerks and lawyers as is evident from the "rolls of parliament" the occasional meetings to which barons and bishops or knights, and burgesses were invited were not parliaments at all. Their proceedings were not recorded in the 'rolls of parliament' till 1300. In the special or general writs under the great seal issued to individuals or representatives for these occasional or afforced gatherings the word parliament was not used. They were summoned to have a colloquium or tractatum (transaction) but not a parliament. The parliaments of the rolls are the parliaments of the Council. They were royal and judicial. Their sessions were regular and were held thrice a year. They did not depend on the king's financial needs as the occasional gatherings did. Their business was also legal, and these councils in parliament passed laws and granted aids "pro se et communitate totius regni quantum in ipsis est" (1290), though representatives of the realm were not there.

Roll's of Parliament.

The modern meaning of the word parliament as a

representative assembly arose gradually. The word 'parliaent' by the end of the thirteenth century was being used in two senses: one which was regularly so called was the King's Council-in-Parliament which was a smaller and a regular body consisting of some prelates and magnates, most of the judges and some clerks, and dealing mainly with judicial or legal business. The other which was so called by chroniclers and later writers was an occasional meeting of the tenants-in-chief specially and generally summoned and afforced by representatives of shires, bororghs and clergy and doing special business. These two bodies met at different times, were summoned by different methods and discharged different functions.

As a representative institution.

The principle of representation was known in the Anglo-Saxon local institutions. Laws were declared by the people in the local courts in the name of custom. Four men and the reeve represented the township in the shire moot. Representation developed in the sphere of local justice, when twelve senior thegns acted for the hundred and twelve justices or lawmen acted for the town and represented the judgment of the whole people on the point of law. Under the Normans it developed in the system of inquest when the jurors or sworn men of the locality represented the opinion of the people on the point of fact. Henry II used the jury system for judicial, fiscal and inquest purposes, where the leading men of the shire and the vill represented their localities. In the Iter of 1194 twelve knights or free and lawfulmen were chosen to represent the hundred and four knights were chosen to represent the county for the purposes of the inquisition. Similarly a local jury of assessment was used for the collection of the carucage of 1198. In 1225 a committee of four knights carried the records on behalf of the county under a writ of false judgment.

Principle of representation.

Representation also developed in connection with the assessment of personalty. Jurors had to tell the

amount of personality. The Assize of Arms (1181) and the Saladin Tithe (1188) were regulated with their help.

Church and the principle of representation.

The church seems to have borrowed the idea of representation and election from the Dominicans in 1221. Stephen Langton applied it to the organisation of the Convocation in 1225. Proctors representing communities of the church and the parochial clergy possessed the powers of attorney to vote taxes in the Convocation. The state also developed this idea of agency in connection with shires and boroughs in order to get money. The writ for the collection of a carucage (1220) is very important because it was granted by the action of two knights chosen in the full assembly and by the will and counsel of the county court. In 1232 the Fortieth was assessed by a reeve and four descreet men elected, and similarly in 1237 the Thirtieth was assessed.

Thus representatives came to be elected as members of a shire and town communities which were corporate bodies and living realities.

The 'Parliament' in the sense of a central representative assembly meant the bringing together in one place representatives from each shire (who were elected by it and who had hitherto been doing the work in it) for the purpose of making them work for the whole community collectively along with the members of the Commune Concilium. The representatives of the shires came to be gradually concentrated in one place during the course of the thirteenth century and were added to the enlarged Curia or Commune Concilium. The barons and bishops who were summoned to attend this assembly seemed to make grants of aids on behalf the freeholders and villeins also, for example, in the writs for the collection of the Fortieth (1232), and Thirtieth (1237). The Magna Charta had recognised the principle of levying extra aids or scutages with the consent of the Commune Concilium. The Commune

Concilium however was losing its importance because of the selfish policy of the greater barons to concentrate power in their own hands by the formation of small committees and to drop the lesser barons who were an essential element of the Commune Concilium.

The crown was also eliminating the feudal character of the various institutions by the adoption of scutage, the reorganisation of the fyrd, the development of new forms and methods of taxes, the creation of royal courts and the new judicial procedure and the new administrative officers, the abolition of social distinctions in the matter of service and administration, and the summoning to his councils great and small barons whomsoever he chose. No class was allowed to enjoy governmental services or privileges exclusively by right. Royal processes of justice and royal service were opened to all.

Causes of the rise of the House of Commons.

Knights, burgesses and other freemen used to come, firstly, to the central courts or Council of the king to present petitions, placita or appeals for the sake of justice or redress of grievances. They possessed that right, when they did not or could not get justice in local courts or at the hands of local officers or lords. These petitions related sometimes to doubtful or difficult points, and new points,

The Commons as petitioners.

and sometimes were appeals. These could be and were decided by the King-in-Council called parliament in the thirteenth century. It was a high court of justice and equity, where the king's prerogative justice was exercised. These petitions were either individual or presented on behalf of their communities by knights and burgesses as procurators or jurors. If they came as procurators they pleaded on behalf of their localities, and if they came as jurors, they gave information or an account of the decision in the first instance. We thus find local representatives present in the Council-in-parliament as petitioners for individual purposes or

collective action, seeking justice and redress of grievances. Collective petitions related to abuses of a general nature and required to be redressed by legislation.

Secondly, local representatives were sometimes summoned from all counties at the same time to return the results of an inquest on the administration of sheriffs (1213, 1226, 1227) or other administrative matters. Thus their interest in public matters increased, and they were encouraged to present collective petitions.

Commons as jurors.

Thirdly, the financial needs and new forms and methods of taxation of the king were the leading causes of summoning local representatives to these frequent central conferences of the Commune Concilium. Taxes at first were levied on land in the form of Danegeld. Henry II, introduced scutage which military holdings had to pay in lieu of service. Other holdings paid carucage in lieu of Danegeld. The products of scutage and fine decreased in the thirteenth century. After 1257 scutage was not exacted. The tenants-in-chief began to grant an aid on behalf of all who held of them. The king exacted an equal tallage or aid from his own domain on which most of the towns were situated. Thus an aid came to be paid by all tenants in shires and towns. A carucage was granted in 1220 by the magnates and subjects of the realm collectively. Church lands did not seem to have been included in it. But later on carucage was abandoned. The earlier method of taxation was that the barons and prelates made their grants in their Commune Concilium and the lower freeholders, lay and clerical, were treated with separately, the towns and counties through negotiations of the officers of the exchequer or the sheriffs in the county court, and the lower clergy through negotiations with the archdeacons, for realising the taxes.

Commons as assessors and collectors.

Henry II had introduced the assessment of moveables in the Assize of Arms (1181) and the Saladin

Tithe (1188). In 1207 John demanded one-thirteenth of the capital value of personality and of the annual income of realty. During the thirteenth century the assessment of moveables or an aid became the rule, and the landed revenue came to be included in it. For the assessment of a carucage, a system of survey was established by the king's officers. Information was supplied to them by the tax-payers or juries of knights. This method of assessment of taxes with the help of sworn representatives was much more necessary in the case of moveables for the purpose of their listing and valuation. Therefore the assessment of the aid had to be done by the knights, and so also its collection. Thus proper assessment and due collection of aids from moveables were also important motives which led kings to summon the knights and to negotiate with them about the expediency and rate of the aid. In the thirteenth century aids were to be paid in the case of realty as an amount proportionate to one's holdings, quota per unit being fixed. The enumeration of taxable units was done by juries (1220). In the case of moveables the juries of knights helped in enumerating and valuing the goods and collecting the tax. Though aids could be granted by barons, and the consent of the knights was not necessary, still for the purpose of convenience and expediency knights were summoned for consultation. The desire for consultation with the knights and their help in assessment and collection are seen in the writs for the collection of Carucage (1220), for the collection of the Fifteenth (1225), of the Fortieth (1232) and of the Thirtieth (1237). These writs associated the knights with the barons in the grant. The knights who helped royal officers in the assessment and collection of taxes found themselves in practice possessing the power of consent due to the official difficulties of proper assessment and easy collection and their own indispensableness, and began to feel that they possessed this right of consent to taxation.

The clergies' consent.

The clergies claimed the right of consenting to an aid through their proctors summoned side by side with the bishops in the thirteenth century. They had advocated and adopted the principle of free consent before taxation either by the king or the pope. The assembly of the clergy in 1226 had adopted the principle of representation. In 1207 John had forced the laymen and the clergy to contribute a thirteenth without their consent, but failed in the case of the clergy.

The consent of the burgesses.

The burgesses also came to be consulted from the same motives as were the knights. Arrangements had to be made with them for the collection of customs in addition to tallages or aids.

Thus we find that local representatives gathered at Westminster before the Council in parliament to present petitions, to act as jurors in cases, to give information in inquests, and to find out what the king had decided in consultation with the barons about their collective demands in relation to their general grievances and about new taxes. They had no legal right to judge, to counsel or to consent in any disputed case, in matters of new laws or taxation. Therefore the number of their representatives was not fixed and in the beginning there were no regular elections in county courts. Very often sheriffs chose them. None of them claimed the right of representation because there was none. They attended at the king's request. Only in cases of collective petitions they would go themselves. They bound themselves in the name of the county to pay the demand. Thus local representatives came at the request of the king to agree to his demands made in the name of the needs of the realm. It was the baronial duty to counsel the king or to give consent to his laws and demands. The presence of the local representatives only favoured and facilitated the raising of an aid which was to be realised from all.

By the thirteenth century the social importance of

the knights and burgesses had also risen in matter of landed and commercial wealth, and their administrative importance in shires and boroughs, and though feudally not important they were largely sharing in the government of the locality. This was also the reason why kings and barons felt it necessary to consult them and seek their co-operation.

Increase in social importance.

The following are the dates when local representatives were summoned to the central or Commune Consilium for the purposes of negotiation on matters of importance.

Central gatherings and local representatives.

1. In 1213 at the general *Council of St. Albans* where bishops and barons had gathered to advise the king in assessing the compensation to be given to the church, the king ordered the sheriffs to send four liegemen from each town in their demesnes, together with the warden in order to make inquiries about the losses and confiscated property of the bishops.

2. In 1213 at the *Great Council of Oxford* John ordered the sheriffs to send four discreet knights from each shire to meet at the time when the Great Council was held to talk with him about the affairs of the realm. This is the first instance of the representatives of the shire going to the national council. But in the Magna Charta (clause 14) there is no reference to knights.

3. In the *Council of 1254 at Westminister* when Henry III was absent in Gascony and wanted money the queen and the king's brother issued a writ of summons for two knights from each shire to come and to grant an aid. They were to be chosen by the county court as delegates of its decision in advance and were to go and inform the Council.

4. To the *Parliament (Council) at Windsor* in 1261 the king summoned the same three knights, whom the barons had summoned at St. Albans, to have colloquy "concerning common affairs of our realm".

5. The *first parliament of Simon de Montfort* met at London in 1264. There were four lawful and discreet knights from each shire elected for the purpose by the assent of the shire as representatives. The summons to them intimated that they were to treat with prelates and magnates concerning the affairs of the king and the kingdom. The scheme called "a form for the government of the king and the kingdom" was said to have been approved by all the prelates and barons and "the whole community of the realm".

Simon's First Parliament.

6. In 1265 the *second parliament of Simon* was called. In addition to the higher clergy and barons, two lawful, honest and discreet knights from each shire, and two similar burgesses from certain boroughs were summoned to negotiate about affairs of the king and the kingdom. In this parliament there were no proctors of the lower clergy and the town representatives were summoned directly and not through the sheriff. It was a tactical measure and contained Simon's supporters. It was doubtful whether he intended to make it a permanent and a regular part of the constitution. But Simon's initiative and device had a great constitutional influence. In 1268 at the parliament of Marlborough Henry III had summoned burgesses, but his parliaments were really the Councils of prelated and barons.

Simon's Second Parliament.

7. To the *first general parliament* of Edward I called in 1275 were summoned four knights discreet in law from each shire and six or four burgesses or other honest men from each town through the sheriff to treat with the magnates about the business of the realm. The statute of Westminister I (1275) says that it was passed "by his council and by the assent of bishops, barons and the commonalty of the realm being thither summoned", Edward continued to summon Parliaments

General Parliament.

and the local representatives from the same motives of administration and taxation which had influenced his predecessors. He wanted then to be consulted on the administration of sheriffs. His financial needs had increased. The extra-feudal aid was then the only additional source of income, and therefore the good will and co-operation of those who were to assess and collect were necessary. His policy was anti-feudal. The new social classes had increased in importance and old feudal classes were decaying. There was more national feeling in the country. The center of wealth and power was shifting. Edward I wanted to strengthen the royal power against the barons, the bishops and the Pope with the support of the non-feudal elements in the society.

It is in the reign of Edward I that the earlier method of local negotiations for realising taxes gradually vanished. He had collected an aid in 1282 by negotiating separately with the counties and boroughs for subsidy. But it did not suffice. He wanted a general grant.

8. In 1282 he called *two provincial parliaments* at York and Northampton. Four knights of each shire and two representatives of each town were summoned. They were to have full powers to make a grant on behalf of their communities. The heads of the religious houses and the proctors of the cathedral clergy were also summoned through bishops for the same purpose. The commons granted in the same proportion as the magnates. The clergy wanted to consult the representatives of the parochial clergy before they would consent to any grant. These proctors (two for each diocese, and one for the chapter of the province) were summoned to new assemblies.

9. In 1290 a *Council of bishops and barons* in full parliament granted an aid 'for themselves and the community of the whole kingdom as much as in them is.'' A fortnight later two knights from each shire were summoned to meet at Westminister with full

powers on behalf of communities to counsel and consent to what was being done. It was the work of legislation and taxation.

10. Similarly in 1294 clerical representatives and knights along with magnates were summoned to separate assemblies to grant money and to do what was enjoined. There were no burgesses.

Model Parliament of 1295.

11. The wars of Edward I increased his financial needs. He wanted the support of the country in his political objects and its help in getting money. The parliament of 1295 was summoned to meet these needs. Barons and bishops came by a special writ of direct summons. Two knights from every shire and two citizens and two burgesses from each city and borough were invited by a general writ of indirect summons through the sheriff. The archbishops of Canterbury and York were 'premonished' to ensure the attendance of heads of chapters, archdeacons, two representatives for the clergy of the diocese, and one for the clergy of each cathedral. Thus this parliament represented all the elements in the country and came to called the 'Model' Parliament.

Before these additional representatives were summoned there was a meeting of the Council-in-Parliament which transacted the usual legal business of the terminal sessions of the ordinary parliament or Council. No attempt was made to raise money in it. The writs issued to representatives stated that the object of the parliament was to have a consultation about providing remedies against dangers to the kingdom. The knights, burgesses, and clergies were to join the prelates and principal men and other inhabitants of the kingdom in doing this. The knights and burgesses were to have full and sufficient power for themselves and for the community of the county or borough in doing what would be ordained according to the common counsel. In the summons to the clergy we find in stated approvingly a church law—"what affects all, by all should be approved".

The work of this parliament was the duty of voting the taxes desired and fixed by the king rather the right of determining them. In matters of legislation it merely attested the laws made by the king in consultation with his judges and lords. In executive matters there was no parliamentary idea of the criticism or responsibility of the executive. It only made in 1297 the king swear to observe the Magna Charta. In matters of justice it was more a high court of justice than legislature. It was a meeting of the Council for the purposes of justice. If contained king's permanent counsellors, namely, the judges of the king's courts, king's officers and ministers, often afforced by lords and occasionally super-afforced by representative members. Before this body petitions were presented. It referred them to proper courts or decided them itself if necessary. The Parliament was a petition-place. The king and his professional staff declared or made laws there. Sometimes he consulted the representatives on a matter of foreign policy or taxation.

12. The *Assembly of 1305* was called a parliament in the ordinary council sense and also in the representative sense. There were barons, bishops, knights, burgesses and royal functionaries. Even after the additional prelates, barons and commons were asked to leave, others of the Council stayed as councillors and were described as sitting in full or general parliament, that is, in conference. Even a more reduced body was called parliament. Very little work of legislation was done by the super-afforced parliament. It was really the Council which did most of the work of legislation, justice etc. The king's Court or Council had kept in its judicial aspect all its authority despite its successive delegation to the Benches. It was the supreme court of appeal and equity which was not bound by the common law and had power to make innovations to meet new, difficult and doubtful cases. The judicial "Court" was held in the "Council" during the meetings called "parliaments". Thus it

was to a high court of law and justice that representative elements were added for the purpose of consultation, advice and consent regarding political and financial measures. In most of the 'parliaments' of Edward I and Edward II no financial supply was asked for or granted.

Edward I and Parliament : His part.

Edward I summoned the commons more as a political and administrative device to strengthen his authority. He wanted to maintain his authority. The barons never thought of the nation but of themselves. They welcomed the commons so that their burden may be distributed or shared. The commons largely appeared as petitioners. The parliamentary system really arose out royal needs and royal will, and not because of any demand for political liberty by the people. The king wanted to keep up the old tradition and to get into touch with his people. Stubbs view was that he was the founder of the parliamentary system or democratic constitution of England. But Maitland, Tout, Petit Dutailles, Pasquet, Lefebvre and Pollard state that he had not any conscious or deliberate intention of sharing his power with his people. In the parliament of 1305 he acted as an autocrat. But he by his frequent assemblies of parliaments and frequent summonses to representatives of communities and consultation with them strengthened the tradition of a political and financial parliament along with the judicial and legislative parliament of the Council, where a large number of individual and collective petitions used to come. It was however the political dangers and financial and administrative needs of the succeeding reigns and the necessity of the people's support to meet them which strengthened and developed the tradition of the new parliament. Edward I was not a constitutional king as Stubbs thought. He used the commons for his own purposes to make his personal power absolute. There was no alliance between the king and the people for the establishment of a limited monarchy. In his eyes the

parliament was an enlarged Council or Curia. He called additional elements at his pleasure. The commons appeared before the Council but did not share in its authority. They were not always present. He did not recognise their right to legislate or to give consent to taxation. He tallaged his own domains. In 1297 he only recognised the necessity of consulting the Common Council for raising traditional aids, mises and prises.

Elements in the Parliament.

The new parliament was composed of six elements and not three estates: (1) the king's counsellors, (2) the barons, (3) the bishops, (4) the lower clergy, (5) the knights, and (6) the burgesses. But the parliament was a common session at one place and one time for a common purpose.

The chamber where all its members met in the king's presence was the only House of Parliament. Even to-day legally it is there in the House of Lords —the successor of the Commune Consilium—where the commons appear to hear the speech from the throne. The rolls of parliament registered only what took place there.

The king, lawyers, clergymen and administrators all believed in a theory of royal absolutism or of divine monarchy. The only counteracting principle was that of a feudal law and of liberties of vassals. The king was the source of power, justice and law. His prerogative was supreme even after he had delegated some of his powers. The barons were selfish and never thought of establishing any democratic system or limited monarchy. They wanted to establish a baronial oligarchy. The clergy wanted ecclesiastical independence or a theocracy. The commons did not initiate or fight consciously for central democratic institutions. They were brought in by the king, or the barons and bishops to support their own cause and theories. The commons were reluctant to grant subsidies and to care for politics.

Edward I had three sorts of gatherings but really one Council in parliament. The first was the Ordinary or Continual Council in which the sworn counsellors sat. Some of them were barons. The second was also the Ordinary Council which contained, in addition to the first, a number of barons summoned by the writ of privy seal. The third was the afforced gathering which contained, in addition to the first two, those invited by the writ of the great seal. It was before this Council that the commons appeared from time to time. Pollard states that in the latter half of Edward I's reign a process of amalgamation started between the Ordinary Council in parliament which had its regular terminal sessions and did its regular judicial and legislative work, and the extraordinary or occasional or superafforced gathering of the Council in Parliament, where additional representative elements were summoned. This led to the creation of the new parliament. Edward I called their sessions together at one place and at one time and thus helped their amalgamation. After the amalgamation the superafforced parliament later on came to claim and to do the legislative, political and taxative work of the king's Council. The local representatives came to perform in course of time both the functions of petitioners of local grievances seeking legal redress and of representing the local opinion in matters of politics and taxation. The desire for redress of grievances by the people and the desire for money on the part of the king led to their connection and amalgamation. Justice for the people and finance for the king were the two principal needs which brought the people and the king together and interwove the democratic methods of local organisation into the royal machinery of the central government. Pollard says that the simultaneous session of the judicial and representative bodies from 1298 in which both the hearing of petitions and pleas and the voting of supplies was done laid the foundation of the English parliament.

Edward's councils.

Amalgamation.

The rolls of parliament henceforth recorded the proceedings of both these bodies, and applied the name Parliament to both of them. In the reign of Edward I however the parliament it was essentially the Council in which the king was present. The commons did not decide but consented to decisions.

Parliament not an assembly of three estates.

Stubbs' view that the parliament was an assembly of three estates—the clergy, the nobility and the commons is not tenable. Pollard says that as a judicature it could not be so, and that as a representative body it was not so. Every estate was not represented either separately, fully or collectively. The English society was not stratified into three estates based on status or birth. Feudal tenure which played some part in organising classes and power did not make rigid estates. The clergy were summoned not because they represented the church but because they were the feudal barons, and as such were liable to suit and service. The king's Commune Concilium contained heterogeneous elements, bishops, barons and judges and clerks. Barons were not entitled to sit. They had a duty, if specially summoned, to do so. A great number were not invited at all. They were only represented in the House of Commons by the knights when summoned by a general summons. The House of Lords contained fragments of the clergy and the barons. The House of Commons was composed of representatives of all estates, minor barons, burgesses and the lower clergy. It was not merely an assembly of the third estate or burgesses. The official and legal element which was present did not form a part of any estate. All the elements met in one Parliament chamber and not in three as three separate estates. Edward I did not know of two houses or three estates. Contemporary writers also did not know about it, Fleta and the writer of Modus Tenendi Parliamentum do not mention them. The formal work of the parliament was done in the common session, and that alone was recorded in the 'rolls of parliament'.

CHAPTER VIII

THE GROWTH OF PARLIAMENT.

Edward II 1307-1327.

During the reign of Edward II the struggle between the government of the realm by royal favourites and that by feudal barons again revived. Both the parties cared only for their own power and not for the welfare of the people. Even when the barons triumphed over the king, the misgovernment of the country continued. The king however during his struggle against the claims of the barons to conduct his government called in the help of the new representative parliament and in the hour of his triumph in 1322 declared that "what concerns the whole realm must be treated of by a parliament fully representative of the whole realm".

Rise of the Ordainers.

During the period 1307 to 1312 Edward II was guided by his own men and the Gascon favourite, Piers Gaveston, who was the Earl of Cornwall. The barons opposed this and formed an association bound by an oath to drive away Gaveston and to deprive him of his earldom. They wanted the machinery of Government to be entrusted to the control of a narrow council of earls and prelates. The king had removed his father's ministers and appointed his own barons of the exchequer, justices of the high court and other ministers. The barons refused to help the king with money. In 1309 he was forced to call a parliament of the barons and commons. Though they gave him money they drew up a long list of grievances relating to the abuses of purveyance, the weakness of government, the tyranny of royal officials and the delays of justice. An answer to the petition was demanded. In a parliament of the magnates of the same year he announced the acceptance of the petition and issued a statute limiting purveyance. But

Gaveston who was exiled was recalled. The barons renewed their attack against an incompetent administration and foreign favourites. In the parliament of the magnates held in 1310 the king had to yield to their demands which were similar to those of 1258. The royal power was to be put in the hands of a committee of barons. The commons were not consulted nor were taken into partnership in this new arrangement. The barons drew up a statement of the 'great perils and dangers' to which England was exposed through the king's dependence on bad counsellors. They also stated that the franchises of the holy Church were threatened. The king assented to their petition which demanded the redressing of these 'perils' by baronial ordinances, and issued a charter which empowered them to elect certain persons who were to draw up ordinances for reforming the realm and the royal household. Twenty one 'Lords Ordainers' were appointed to do this.

Ordinances of 1310-1311.

Though the Ordainers were appointed by a baronial parliament the commons were summoned to ratify their recommendations or ordinances. According to these the great officers of the state were to be nominated with the consent of the barons and to be sworn in parliament. Their consent was necessary for the alienation of crown lands. No war was to be carried on, no army was to be raised, and the king was not to leave the kingdom, without the consent of the barons in parliament. The king was to live of his own and to abolish illegal exactions. Special judges were to hear complaints against royal ministers and bailiffs. The privileges of the church were to be maintained. The Parliament was to meet at least once a year. Foreign favourites were to be banished. In this programme of limited monarchy and extensive oligarchical powers there was no share given to the clergy or voice to the commons. The king yielded under threats and granted the ordinances (1311). But he recalled Gaveston. The barons under the leadership of Thomas Earl of

Lancaster and the Archbishop Winchelsea took up arms. The defeat of the king at Bannockburn (1312) by the Scots weakened the king's power and prestige.

From 1313 to 1322 the baronial party held great powers. In 1315 the superfluous members of the royal household were dismissed, king's allowance was reduced, and the administration of his revenues was taken out of his hands. Its spending was kept entirely in their own hands by the barons. The parliament of 1316 resolved "that the lord king should do nothing grave or arduous without the advice of the council and that the Earl of Lancaster should hold the chief place in the council." The king was forced to confirm these ordinances. The incompetence of Lancaster and the personal and territorial jealousies of the barons led to a civil war in 1317 between the Lancaster or Ordainers' faction and the Pembroke or moderate group. The Pembroke party succeeded and controlled the government from 1318 to 1321, and saw that the king consulted parliament in all matters. In 1319 the king tried to establish the court party. His chief helpers were the two barons called Hugh Dispensers, father and son. They were ambitious of power and with the favour of the king became powerful. But the parliament of 1321 where magnates, commons and clergy were represented banished them. They were accused of aspiring to royal power, of turning the heart of the king from his subjects, of exciting civil war, and of teaching obedience to the crown rather than to the king. The barons were however divided. At this time the king took up arms to avenge an insult to the Queen and recalled the Dispensers in 1322. He defeated Lancaster and executed him. He called a parliament of all elements at York in 1322 which revoked the ordinances as infringing the rights of the crown and declared "what concerns the whole realm must be treated of by parliament representing the whole realm." The oligarchical party and policy had failed.

Rule of the Ordainers.

Success of the king.

From 1323 to 1327 the Dispensers carried on the government. But their rule was weak. Greedy nobles and prelates were alienated, and so also other elements because of the insecurity of life and property. The queen who was ambitious of power and control over the king conspired against him and his ministers. A conspiracy was formed by her and her paramour Roger Mortimer in France in 1325. They landed in England in 1326 and raised a revolt against the Dispensers who were captured and hanged. The king was made to resign in 1327 by the parliament which was fully representative of all classes. The following were the charges in the articles of accusation brought against him. He was incompetent to govern in person, because he had been controlled by evil counsellers to his own dishonour and to the destruction of the holy Church and of all his people, neglecting the good counsel of the great and wisemen of the realm. He lost territories. He imprisoned, exiled, disinherited and killed many great and noble men of the land. He did not do justice according to his coronation oath. He ruined his people and realm in all ways. His cruelty and lack of character were incorrigible. Therefore his son was to be crowned as king Edward III and he was to be deposed. After his deposition he was soon murdered at the instance of his wife and her paramour.

Rule of the Dispensers.

King's deposition.

The power of the parliament increased during Edward III's reign owing to his need of money in conducting the French war. He took care to be on good terms with his parliments. He accepted the theory of parliamentary government. The parliament was summoned by him with great frequency. In the reign of fifty years there were forty-eight sessions. This was largely due to the French wars which made him dependent on parliament for supplies. He asked their advice in matters of war and foreign

Edward III, 1327-1377.

Development of Parliament.

policy (1332). The commons organised into a separate House of Commons by 1341; and became assertive. After the ministerial crisis of 1341 their powers increased. There was to be no taxation without the consent of parliament (1341). Both houses were to concur in legislation. The parliament gained some control over the executive. There was in 1341 an assertion of the privileges of peers in trial and the cessation of the Presentment of Englishry. The king renounced the right of purveyance in 1362 save for the king and the queen in which case ready payment was to be made at the current prices. In 1371 the lay barons and commons demanded that none but laymen should be appointed to the great offices of the realm and that clergymen who had long been enjoying these offices and who could not be brought to account for their acts should be excluded. The king agreed and removed the clerics from office. In 1372 the parliament decided to exclude lawyers who did business in the king's courts and sheriffs who were king's officers from sitting in parliament. In 1373 the commons requested for a committee of the lords to confer with them on the state of the realm. During the closing years of Edward III's reign when he had become aged and weak there developed a court party led by John of Gaunt and an opposition party led by the Prince of Wales. John of Gaunt controlled the government. There was popular feeling against him because of the failures of the French war, of his associates and policy and of his being suspected at aiming at the succession. The Black Prince led a vigorous opposition and in the Good Parliament of 1376 the storm burst. The commons were in favour of reforms and were anxious to ensure succession to Richard, the son of Black Prince. They were supported by Edmund Mortimer, Earl of March who was the next heir and by the leaders of the clerical party. The commons acted strongly against the favourites and the court party. The parliament made a number of radical

The Good Parliament.

The good Parliament.

demands which were grudgingly and partially granted by the king. But upon its dissolution its work was annulled by John of Gaunt who declared that it was no parliament at all. The newly appointed ministers were dismissed. Those who were impeached, namely, Latimer, Lyons and Alice Perrers were recalled and the speaker Peter de la Mare was imprisoned. Not one of the petitions became law. The parliament of 1377 which was packed by John's partisans undid the work of the Good Parliament.

The Law of Treason.

The law of treason was fully stated for the first time in the Statute of Treasons passed in 1352. A person was adjudged to have committed treason against the king if he compassed or imagined the death of the king, queen, and their eldest son and heir, or if he violated the queen, the eldest daughter unmarried or the wife of the eldest son and heir, or if he levied war against the king or followed and helped the king's enemies, or if he counterfeited the king's Great or Privy Seal or his money, or if he slew the chancellor, the treasurer, or the king's justices. Persons who purchased papal provisions were to be out of king's protection. They were to be treated as enemies of the king and had no status in the eye of law and court.

The elements in the parliament.

The 'model' parliament of 1295 was a composite assembly. There were two grades of the barons, major and minor, two grades of the clergy, higher and lower, and two sections of the commons, freemen of the shire and burgesses of the borough. It was the royal power which brought them and kept them together.

Knights.

The knights were mainly the smallest of the minor barons. They were the military tenants-in-chief of the king for a single knight's fee or even less. They were elected in a full county court which contained three elements, namely, majores barones, lay and ecclesiastical,

knights and burgesses, and other freemen who held land. The knights joined socially and politically with other small freeholders who were sub-tenants or socage tenants. A military tenant may be rich or poor, so also a sub-tenant and a socage tenant. They were not differentiated by any political or social privileges and powers. They formed a class of country gentry whose interests lay in the management of the county business judicial and financial, police and military. They had common social and political interests. Royal policy went to unite them. The minor barons had no common interests left with the major barons. Edward I wanted to minimise the importance of the tenancy-in-chief in governmental matters and to place the whole body of free-holders on a basis of equality.

Burgesses.

The burgesses were a newer class. Their wealth and their charters gave them economic, social and political importance. Socially and morally they differed greatly from the knights who belonged to a military class and therefore were nobles. There was no social distinction between the greater and smaller barons. But the greater barons persisted in creating a hereditary peerage on the basis of the royal writ and thus brought about a separation. The knights performed administrative functions in the county and were summoned regularly before the burgesses were. At first the knights and burgesses sat and deliberated separately. The knights sat with the greater barons and voted with them.

The fusion of the Knights and burgesses.

The fusion of the knights and burgesses was largely due to their representative character, and to the fact that they were summoned by the sheriff and elected by the shire court. They were both summoned on exceptional occasions at first and were dismissed together from the Council in parliament before the barons and others were. The knights represented all free-holders, socagers as well as sub-

tenants. The social distinction between them and the burgesses was gradually decreasing. Their fusion was moreover favoured by their practice of presenting jointly their collective petitions and by the kings encouraging this practice. The kings addressed precise requests to them jointly. Consequently they had to deliberate together and presented collective petitions, and joint answers to king's requests. The growth of collective petitions was rapid under Edward II. This led to the growth of common action and joint deliberation amongst these two classes.

Rise of the House of Commons.

From 1314 there were debates about 'the petitions of the community of England.' In the parliament of 1322 at York the commons were treated in a casual fashion. The king did not receive their petitions or replies. They were dismissed without any reply. The statement 'what concerns every one must have the consent of all' was an emergency measure. The king continued as before to issue laws of every kind. But still the influence of the commons grew under Edward II. They were summoned often in order to get their support for administrative and political measures. Though their consent was not legally necessary their goodwill and approval were desirable and helpful, because the knights exercised a great influence in the counties socially and morally. In 1325 the rolls of parliament began to distinguish the petitions which were "for the whole community" from others. In 1327 the commons asked that their petitions should be transformed into statutes in parliament.

Under Edward III the knights and burgesses made progress towards greater fusion. Collective petitions had to be preceded by joint deliberation. In 1333 knights of the shire are found deliberating with the burgesses. In 1340 six burgesses and twelve knights were elected to join with prelates and barons as triers and receivers of petitions and to put them in

the form of statutes. In 1341 the commons were organised into a separate house with a clerk of its own to draft their petitions and their replies to the king and to keep a record of their proceedings. But their part was still not prominent but humble. All the cries of the period were decided by the barons. In that year the knights and burgesses voted their taxes together. By the end of Edward III's reign individual petitions went to the Chancery or the Council. Judicial parliaments were decreasing in importance. The commons were only summoned for granting subsidies and did not feel eager to do it. The growth of collective petitions based on common grievances of a political nature made the parliament a deliberative and political assembly. While individual grievances were matters of judicial action, common grievances were matters of politics and legislation.

The clergy.

The higher clergy had sat in the Witan and in the Norman council. After the conquest they sat not so much in the capacity of bishops as that of barons. The prelates and barons sat as one body in the Commune Concilium. Both were summoned by special writs as major tenants-in-chief holding by military service and liable to suit and service in the king's court. They formed one assembly with the lay major barons and became later hereditarily entitled to summons by a special writ along with them to the Magnum Concilium or the House of Lords. The lower clergy at first had no place or voice in the political institutions of the country. The higher clergy did not sit in the Commune Concilium as representatives of their order or on behalf of the church. The clerical synods were however meetings of all classes from the parochial clergy to the prelates for religious purposes. They had their own courts and canon laws for the trial of all ecclesiastical persons independent of the common law. In the struggles of the church for immunities, privileges, ecclesiastical investiture, freedom of election, benefit of the clergy, appeals to Rome etc., their status was

increasingly differentiated from the laity or other secular communities and interests. These struggles and aims created a sort of unity in the estate of the clergy.

Taxation of spiritualities.

Moreover the royal taxation of spiritualities in the thirteenth century compelled them to unite and to claim a place in the councils of the country. Taxation of clerical property was at first confined to the temporalities, that is, secular possessions and revenues of ecclesiastics proceeding from land. The bishops who alone were concerned in this acted with the baronage in the Commune Concilium. Spiritualities consisted of tithes and offerings given for spiritual service. John's attempt to tax in 1207 spiritualities failed. But John's submission to Papacy in 1213 led to the beginning of the clerical subjection to state taxation of spiritualities under Henry III. The Popes made it regular in their own interests. The king shared in it as a helper and a partner. Edward I however began to exact by himself taxes from the clergy. Instead of getting the taxes however from them as a separate estate he got them in a common parliament of which they were made a representative element. Every Englishman was brought in there either in person or by procuration. The regular taxation of spiritualities by the king led to the representation of the clergy in parliament, for in 1282 the bishops refused to agree to consider a demand unless the lower clergy were represented. They were summoned to send two proctors for the parochial clergy and one proctor for each chapter of the province to ecclesiastical assemblies to negotiate about contributions. In these assemblies for secular business they discussed public questions and presented petitions for readers of grievances. In this way the clerical estate worked out its distinct organisation as an estate of the realm asserting deliberative and taxing powers. The parochial and cathedral clergy were summoned to send

Representation of the Clergy.

representatives to the parliament of 1295. The defeat of Pope Boniface VIII's attempt in 1296 to prevent clerical taxation by secular powers by his bull 'Clericis Laicos' established the principle of the taxation of the clergy as a part of the nation. The clergy continued to sit as a part of parliament till 1322. After that they voted taxes separately till 1664 in their own two provincial Convocations which were their assemblies, meeting for purely ecclesiastical purposes at Canterbury and York. They were called by the writ of archbishops addressed to bishops of their own provinces. These provincial Convocations had adopted the principle of representation from 1225 and applied it to its various communities (collegia) and orders, that is, cathedral and monastic chapters and diocesan clergy. Proctors representing collegia and parochial clergy gradually became an essential part of the convocations and exercised the powers of attorney to vote taxes. Such representative ecclesiastical councils took place in 1225, 1258, 1273, and 1277. Thus we find that it was political convenience that led the knights of the shire to unite with the burgesses and induced the clerical proctors to confine themselves to their own convocations.

The Barnos.

In 1295 the major barons came as before to the parliament in a primary capacity through direct royal summons. Their share in the Council work was traditional. They exercised legally the right of counsel and consent in the Commune Concilium. They took part in the judicial functions of the Council or restricted Curia Regis and in administrative functions as members of the Ordinary Council. They alone had voice in legislation even in 1295, and continued to possess it for some time more till the commons claimed an equal share with them. Under Edward II the name 'Council in parliament' began to be reserved for the assemblies in which the barons summoned to the Council sat jointly with the commons, and the name 'Magnum Concilium' for the assemblies in which they sat without the

commons. Both the assemblies were summoned under the Great Seal. From the latter half of Edward III's reign the writs for the Magnum Concilium were sent under the Privy Seal, while the Council in Parliament continued to be summoned by the Great Seal. Thus it was not any idea of status or class but royal writs and directions that determined the composition, organisation and growth of the institutions of parliament.

Magnum Concilium according to Baldwin was merely an enlarged session of the Ordinary Council. Both were summoned under the Privy Seal. The Magnum Concilium was never any permanent and organised body.

The Council in parliament, after the separation of the House of Commons and the elimination of the professional element made up mainly of the household functionaries, became transformed into an

Rise of the House of Lords.

hereditary House of Lords. The barons had worked to exclude the curiales from the Council in parliament and had avoided amalgamation with the lesser barons. From the time of Edward III, curiales, that is, justices, barons of the exchequer and other officers were no longer admitted to the Council in parliament, save for consultation. Left alone in the Council in parliament they made the obligation of attendance upon royal summons under the Great Seal into a hereditary right. The name House of Lords came during the Tudor times.

From 1307 to 1377 there was a great development in the composition and powers of the parliament. In point of *composition* there was the growth of two houses. The clergy preferred to deliberate separately in their own convocations in which they used to make grants of money before. Though they were always summoned to parliament they only attended at intervals till 1322 and then they ceased to attend it altogether. The union and fusion

The development of Parliament in composition.

of the knights and burgesses took place in 1341 because of their growing identity of interests and needs and the common procedure of summons and consultation adopted by royal writs and directions in their case. In 1341 the House of Commons separated from the Council in parliament, not because there was any caste or nobility of blood enjoyed by the major barons. The law did not recognise any status or nobility of blood conveying political privileges. The children and kinsmen of a nobleman had no privileges which freemen had not. It was also not due to any distinction in land tenure. Every major baron was not entitled to a special summons and a seat in the Commune Concilium. It was really the royal action in the form of a special personal summons which entitled a baron to a seat there. These specially invited barons and bishops formed the House of Lords. The status of peers depended on the hereditary reception of the writ of special summons rather than on the tenure by which they held. Edward I invited a smaller number of majores barones and not all who used to get an individual summons. He even summoned by special writs some who did not possess the qualification of baronial tenure.

In functions.

In point of powers its growth is seen in its increasing control over taxation, legislation and administration. *Its direct control over taxation* grew thus. In 1295 the king used parliament as one method of getting money.

Its direct control over Taxation.

He continued other devices of getting money. Parliament wanted to control all the kingly devices and sources of taxation and grant taxes itself. Firstly, it restricted the direct action of the crown with regard to indirect taxation by the confirmation of charters in 1297. The king promised not to take any aids, tasks or prises but by the common consent of all the realm, and for the common profit thereof, saving the ancient aids and prises due and accustomed (clause 6), and that "we will not take such thing nor

any other without their (commonalty of the realm) common consent and good will, saving to us and our heirs the custom of wools, skins, and leather granted before by the commonalty aforesaid." Prises on all imports and exports except wool were made a matter of paliamentary grant in 1372 and continued to be so under tunnage (goods imported other than wine) and poundage (goods exported other than wool). Secondly, in regard to direct taxation parliament restricted the king's action by the act of 1340. It abolished the maletote and the king's right to tallage or aid at his own will. The tallage was an aid demandable by the king of his demesne lands at his own will. King's demesne contained most towns. The king was not to take directly common aid or charge except by the common consent of all given in parliament. The king also used to get direct taxes after consulting bodies other than parliament. The Convocation of clergies paid separately from 1322 to 1664. It used to vote taxes whenever parliament voted and paid them. The king also used to get money by colloquium (conference) of foreign merchants as regards the custom on wine, wool and merchandise, that is, imports and exports and by 'colloquium' of native merchants for keeping the sea free of pirates and for protecting their interests on the sea. The parliament used to ratify the grants of such colloquies but protested against the method of such colloquies and their grants. It ratified these grants because it did not want precedents of separate and independent grants made by merchants. In 1303, by the *carta mercatoria* which conveyed certain privileges to foreign merchants Edward I had obtained their assent to the parva and nova custuma. In 1362 and again in 1371 an act laid down that merchants and other bodies should not vote any subsidy or charge on wool without the consent of parliament. This prevented private agreements by the king with merchants for getting money indirectly. In 1373 the parliament brought under its control other indirect taxes under

the name of tunnage and poundage (the nova customa) imposed on English as well as foreign merchants.

The commons also gained an *indirect control over taxation* by the assertion of three principles. Firstly, the principle was asserted that redress of grievances should precede supplies. In 1309 the commons granted a subsidy "upon the condition that the king should take advice and grant redress upon certain articles in which the grievances were set forth." Similarly in 1340 they wanted to make conditions before assenting to a grant. Secondly, the principle of appropriation of supplies was pressed. It meant the granting of money for a specific purpose for which alone the money was to be used. The first instance was in 1353 when a subsidy on wool was granted to be applied solely for the purposes of war. Thirdly, the principle of the audit of accounts was enunciated. In order to ensure that the money which was granted was actually applied for the purposes for which it was granted, parliament appointed commissioners to examine public accounts. The first instance was in 1341. Auditors elected in parliament were to audit public accounts. In 1377 parliament appointed two treasurers.

Its indirect control over taxation.

Its control over legislation also gradually developed. Though the Lords Ordainers had tried to monopolise deliberative and executive powers, the statute of 1322 finally recognised the equal voice of the commons in legislation along with the lords. It laid down the democratic principle "quod omnes similiter tangit, ab omnibus approbetur." But this did not mean more than their right to petition and previous deliberation. Nearly the whole of the legislation of the fourteenth century was based upon the petitons of parliament and initiated largely by the commons. The king being the source of law legislated but only at the petition of the commons. The redress

Its control over Legislation.

of grievances became the condition upon which a money grant was made (1376). This method of petitions was not however effective. Kings often evaded the demands made in petitions by delaying or by drafting laws in a way which did not remedy the grievances or by revoking them, dispensing with them or suspending them by his prerogative power, or finally by not enforcing them at all. Direct evasions of the king were checked by ensuring that clear, definite and satisfactory answers should be given to petitions before supplies were discussed and granted, that parliamentary session should not break up till its business was completed, that petitions should not be altered in the process of being turned into statutes and that statutes should be read in the parliament before they were sealed. The real remedy however was adopted in 1460 when ready-made bills were brought forward and the king was asked to say yes or no. All changes were to take place in the presence of those who had brought the bill forward.

In 1353 parliament protested against legislation by ordinances of the Council. The parliament wanted them to be read and put on the rolls of parliament. In 1354 certain ordinances were confirmed in parliament. The king also evaded the statutes indirectly by obtaining new petitions for the reversal of legislation or by influencing elections and thus obtaining a subservient majority in parliament or by continuing the method of legislating in his Ordinary Council.

Its control over administration developed similarly. The absence of Richard I and the minority of Henry III had led to the exercise of royal authority by ministers. While doing that work the king's ministers came face to face with the barons of the Commune Concilium. William Longchamp, justiciar of Richard I and Hubert de Burgh of Henry III had been deposed because of the protest and opposition of the barons and bishops, though they had pleaded that they had acted according to the wishes and orders of

Control over administration.

the king. This gave rise to the idea that the personnel and actions of the royal ministry could be checked during a king's absence or minority by the higher barons and bishops, and the king could not protect it. In 1237 the barons secured control over the expenditure of a thirtieth by appointing a committee of four barons according to whose advice the money was to be spent. In 1244 the barons claimed a voice in filling the offices of the justiciar, chancellor, and treasurer. In 1258 they wanted to reappoint the royal ministry with their advice. Such baronial activity continued till the end of Edward II's reign when Lords Ordainers had tried to control the king's executive. But in the reign of Edward III the control was claimed by both the houses when there were financial difficulties and ministerial mismanagement. In 1341 there was a ministerial crisis. The king had dismissed his ministers and judges from office owing to remissness in matters of government and finance. Robert Stratford chancellor and John Stratford the archbishop were amongst them. The archbishop claimed the right of trial by peers and the lords upheld his cause. Being in want of money the king had to yield to the barons and clergies. He conceded to the parliament consisting of lords and commons (1) the right of a peer to be tried by his peers in parliament, and (2) that the ministers were to be appointed after consultation between the king and the barons and that after appointment they should be sworn in parliament to keep the law; and that they should resign on the opening of each parliament for the purposes of an inquiry into their conduct. Here was asserted the *principle of control of ministers* but the statute was annulled by the king shortly after because it was contrary to the laws and customs, rights and prerogatives of the king. Later on the commons asserted *the fact of control* in the Good Parliament of 1377. They gained complete control over the ministers by the introduction of impeachment. It was a method of trial for political offences in which the commons as a grand jury of the

whole nation were the accusers and the lords as the High Criminal Court were the judges. The commons impeached Lyons for malversating and treachery and Latimer for extortion, and Alice Perrers for interference with justice. They were tried and found guilty and punished. Lyons pleaded in vain that he acted at the express command of the king.

The commons also petitioned against Papal exactions and mismanagement of the war and arbitrary taxation, demanded annual parliaments and free elections of the knights of the shire and petitioned for the appointment of twelve councillors from lords to "enforce the royal council. These petitions were grudgingly and partially granted by the king. But on the dissolution of the parliament its work was annulled. Its importance however lay in the common's lead in national policy and claim about the right of parliament to control the whole administration, in the first use of impeachment, and in the assertion of the doctrine of responsibility of ministers to parliament. In 1332 the king had asked the parliament of magnates and commons advice about war. In 1348 however the commons had refused to advice the king directly as to the war "because they were so ignorant and simple." In the proceedings of the parliament of 1377 however Peter de la Mare, the speaker of the House of Commons, had taken a leading part.

The constitutional advance upto 1377.

By 1376 England gained a uniform law. All justice was practically done by king's judges according to the law of the land. Thus there was one royal judicature and one national law. The only exceptions were the church, the marches and palatinates and a few franchises. But though in theory there was a reign of law, in practice there was much lawlessness. There was a national parliament and there was some solidarity of action on its part. The crown's need of money and of support against the barons gave the commons some control over taxation, legislation and administration. Full control was not acquired, but

some forms, methods and precedents of control were established.

There were some grave defects also. Under the royal prerogative the king claimed to act freely in respect of legislation and to issue laws himself without the consent of parliament or by overriding laws made by him in conjunction with parliament. He also claimed to interfere in respect of justice by the administration of the common law or equity through his Council. These claims threatened to check the development of the parliament and judiciary. The administration of law was poor and weak. It produced general lawlessness. Courts could not give redress as both judges and juries were terrorised by powerful offenders. There had risen according to Dr. Baker a feodalité apanagée. The policy of the crown in creating a number of princes of blood royal endowed with large feudal estates meant that the feodalité territoriale of the twelveth century was giving place to the feodalité apanagée of the thirteenth and fourteenth century. This policy resulted in the baronial quarrels and opposition of the fourteenth century. The system of indentures helped this feudalism. They were agreements made by the king with individual barons under which the king was to pay and the barons were to provide soldiers for fighting. These feudal followings were used freely by the princes in their quarrels and even against the king. The system of finance then prevailing was unsound. The theory was that the king must live of his own. Occasionally he was to be given subsidies or aids of a tenth or a fifteenth to meet the needs of war. This theory made it possible to check the king, because the theory of redress of grievances before grants of money had developed. With wars to wage and conquests to maintain the king could not live of his own and became bankrupt. The increasing royal indebtedness meant the weakness of the administration. Ministers either began to exact payments themselves or else to trouble the nobles.

Some defects.

CHAPTER IX.

THE REIGN OF REVOLUTIONS.

Richard II 1377-1399.

Richard II being a minor a Council of Regency in which both the court party and the party of opposition were representeed was set up to administer the realm. It however proved weak owing tc its discordant elements. John of Gaunt's power declined. In the first parliament of 1377 the Council was remodelled, and it was enacted that no act passed by parliament was to be repealed save by the consent of the parliament. Parliament annexed conditions to the supply of money which was to be treated as a special contribution for the war and to be administered by two treasurers appointed for the purpose. It was added that for the future the king 'could live of his own' and conduct the war from his ancient and regular income, if only he were provided with capable and economic ministers. This could not be correct. Old feudal revenues and customs could not have sufficed to meet the expenses of the disastrous struggle with France. The Council agreed to these conditions. The commons further demanded that the chancellor, treasurer and other great officers of state should be appointed by parliament and that no person impeached, or attained by parliament should ever be appointed to the Royal Council. In 1379 the king ordered accounts to be submitted to parliament. The parliament appointed committees in 1380 to regulate the royal household. From 1382, however,

Period of his minority, 1377-1389.

Rise of the Court party.

under the influence of Michael de la Pole who guided Richard's ideas in matters of government, the idea of strengthening the royal executive instead of conferring new powers on parliament arose in order that the government of the country might be streng-

thened and made orderly. According to Michel, the only way to do this was to strengthen the royal prerogative. Richard trusted Michael and accepted his ideas. He came to believe that both the Household and the Council were completely within the sphere of the royal prerogative. Consequently in 1383 he dismissed the ministers whom parliament had chosen, appointed Michael as his chancellor and started the experiment of his personal government. The session of the parliament of 1384 however formed the turning point of his reign. He openly set himself to face and override his uncles and his other councillors and to enforce his policy in parliament. In this policy he was supported only by a small body of followers. The commons however began to raise the constitutional cry "that the king should live of his own," and protested against the lavish gifts of the crown property. They requested him to allow his private accounts to be audited by a commission appointed by parliament and to publish the names of all councillors, ministers and officials whom he intended to employ for the ensuing year. The king refused and acted in opposition to the petition of the commons. John of Gaunt had left for Portugal and the Duke of Gloucester posed as the chief councillor of the crown. He became the leader of the opposition and attacked the king's favourites.

Parliamentary Session of 1384.

When the French threatened an invasion of England in 1386 the lords and commons refused grants till the Chancellor Michael, Earl of Suffolk and the treasurer were removed from office. The king refused. The Houses under the leadership of Gloucester voted to do nothing till the king heard their complaints. Gloucester formally moved that the records of the deposition of Edward II should be sent for and be recited to the Houses in order that they might know the exact forms that could be used against a recalcitrant king. Gloucester was sent by the Houses to meet the king. In the interview, it

Crisis of 1386.

Gloucester's leadership.

is stated, he alluded to the fate of Edward II and frightened Richard into surrender in the name of the parliament. Consequently Suffolk and others were dismissed. Following the precedent of 1376 Suffolk was impeached and accused of subverting the laws and defying the parliament and filling his pockets by misappropriation and by grants from the crown. He made a good defence on these points and proved that he had acted under the orders of the king and with the consent of the Council. In spite of this he was sentenced to forfeiture of his estates and imprisoned. Following the precedents of 1258 and 1310 Richard was put once more under tutelage. A Commission of Regency of eleven lords was appointed to supervise and control all his acts for a year, to control his revenue and household, to appoint to all offices and to resume all illegal grants of royal property. But after the Houses had done their business the king dismissed them with a warning "that for nothing done in the parliament would he allow any prejudices to his person or crown, and that he intended that the prerogatives and liberties of his crown should be kept and preserved without detriment." He released Suffolk. Thus the politics of the state were in a critical state. The administration of the realm was in the hands of the Council of eleven and the ministers whom it had chosen. The king was free from all the responsibility of government.

Impeachment of Suffolk.

In 1387 the king obtained the opinion of five judges that (1) the appointment of the Council was against the ancient prerogative rights of the king, (2) that the lords and commons had no right to diverge from the programme of business laid before them by the king and to discuss other matters without his leave, (3) that the king alone could dismiss ministers and that parliament could not impeach them without his leave, (4) that the person who had caused the statute relating to the deposition of Edward II to

The opinion of the Judges.

be recited in parliament was a traitor, and (5) that the sentence passed on Suffolk had been erroneous and revocable. They further opined that the individuals responsible for all the late attacks on the royal prerogative were guilty of high treason, and lay at the king's mercy for their lives and property. The five Lords Appellant of 1388, Duke of Gloucester and others, accused the king's friends of high treason and took up arms. The king was plotting a coup d'etat by raising a force. But in the fight the forces of Gloucester were victorious and the king had to yield to every demand the Lords Appellants made. In the Wonderful or Merciless parliament of 1388 which was packed by Gloucester with his supporters and was supported by the city of London, the Lords Appellant "appealed" the five traitors, that is, a Bill of Appeal accusing five of the Court party or the king's friends of subverting the constitution, of using the king for their own purpose and making him waste his treasure etc. was brought forward and passed. The accused were condemned illegally and either executed or banished. Some saved themselves by flight. The Appellants rewarded themselves by grants of land and money. They secured the control of government and swept away the court party.

Success of Lords Appellant.

The Merciless Parliament.

The work of the Merciless Parliament was revolutionary but not constitutional. The king yielded only owing to the fear of the fate which befell Edward II. The event however showed the importance of parliament. The barons acted not by themselves as in 1311 but through parliament. The lords decided that the action of the Appellants was legal owing to the sanction of the parliament which was the only proper tribunal to deal with such high matters of state and such powerful criminals. The parliament was the highest court under the common law and England had never been subject to the civil law. The king had objected that neither the common law of England nor the civil law justified such a procedure of prosecution

before the lords on a bill of Appeal presented by private persons. Judges had decided it to be improper and illegal. This event showed that the nobles still retained great power and were jealous of the king's own ministers. Nothing formal was however done to change the constitution. The king was left under the tutelage of his Council and ministers chosen for him by the parliament. No permanent check was put on his prerogative. The king's spirit was not broken and he bided his time. On attaining majority in 1389 he displaced Gloucester and showed wisdom in appointing Edward III's ministers to vacancies in the Council. John of Gaunt supported him. Thus the king's position was strengthened and for eight years he ruled well and England had peace.

The Interlude of 1389-1397.

Richard's attempt to seize autocratic power had been frustrated in 1388 and so also that of the Lord's Appellant to establish an oligarchy. England was being governed in a thoroughly constitutional manner. Richard was not able to develop a new court party. The legislation passed during this period was however absolutist in tone. Some of the laws were anti-baronial and anti-papal. An act was passed against the practice of trying before the Council offences that should have come before the ordinary law courts. Another act of 1390 was directed against the pernicious practice of livery and maintenance. The provisions of the Statute of Mortmain (1279) forbidding grants of land to corporations were tightened in 1391 and in 1393 and the statutes of Provisors (1351) and Praemunire (1353) were re-enacted and extended.

The crisis of 1397-1399.

The causes of the crisis of 1397-1399 were firstly that Richard after his second marriage (1396) began to spend extravagantly in the household and this compelled him to borrow and to extort money, a fact which, produced discontent and hatred against him from all sides; secondly, that his wife was only seven

years of age and therefore the hope of an heir was postponed indefinitely and as a result Richard's position was weakened, and though Roger of March had been declared heir in 1386, Lancaster and York began to cherish some hope of succession; and lastly, that the factious opposition of Gloucester within the Council and his reckless language without it were always irritating to the king and had also made Gloucester unpopular.

The Commons' protests.

The commons in the parliament of 1397 had sent up a bill to the Lords complaining (1) that sheriffs were continued in office more than a year, (2) that the abuse of livery and maintenance was prevalent as ever, and (3) that the king's household was unduly numerous and expensive. The king was specially accused of keeping at court too many bishops and ladies. An attack on the expenses of the royal household led to a furious outburst of Richard. He declared himself mortally offended and insulted by the criticism passed on his domestic economy, and charged Lancaster to demand from the Commons the name of the member who had drawn up the clause. This was a direct attack on the freedom of debate. But the House tamely gave the name, and Thomas Haxey who was the author of the clause was tried in parliament, adjudged to have committed treason and condemned to death. He was however a clerical proctor and was therefore released under the benefit of clergy which he claimed. The cowardice shown by the Commons encouraged Richard to assert himself. At the end of 1397 he pretended that Gloucester, Warwick and Arundale had formed a plot against him. He got eight lords to bring bills of "appeal" of treason against these three of the Appellants for their conduct in 1388. They were condemned in a packed parliament of 1397. Gloucester died in prison, Arundale was executed and Warwick banished. Their estates were divided amongst the appealling lords. The packed parliament of 1397 annulled the acts of 1388 and the condemnation of Suffolk, and con-

Trial of Haxey (1397).

firmed the opinions of the judges in favour of the king.

Shrewsbury Parliament of 1398. Richard's absolutism.

In 1398 the Shrewsbury session of the same parliament made the king independent financially by giving him a subsidy of 40s. on wool for life and delegated the powers of parliament to a council of eighteen which contained king's friends. Thus the king became absolute, but he owed his position to the action of parliament. He ruled despotically. In 1398 Roger Mortimer, the heir to the throne, died. Consequently Henry of Lancaster laid claim to the succession, and became the leader of the constitutional party which again sprang up. In 1399 Richard being in need of money levied forced loans, fined seventeen counties and also individuals for helping Lords Appellant and on the death of John of Gaunt (1399) confiscated his property which was the inheritance of Henry of Lancaster who had been banished on a charge of treason. Richard had thus committed a series of arbitrary acts which were as unwise as unconstitutional. He got elated by his arbitrary power, used words of unseemly violence at the Council board against objections, browbeat the judges and caused numerous persons to be seized and kept in prison for an indefinite time without trial. His general conduct became intolerable. In 1399 when Richard was absent in Ireland

Landing of Henry.

to put down a rising, Henry of Lancaster landed in England to claim his ancestral estates and possessions. Richard returned but had to surrender to Henry and to resign.

Richard's surrender and abdication.

He was made to absolve all men, secular and clerical, from the oath of fealty, homage and allegiance to him, and to renounce and to resign freely and voluntarily all his powers and dignities and lordships, and the command, government and administration of all realms and lordships, and to confess that he was wholly insufficient and useless and that he was not unworthy of being deposed because of his notorious deserts. He was then made to abdicate and the parliament accepted

his deed of abdication. In a list of 33 articles which summed up all his evil-doing he was accused of injustice to Henry, of breaking the constitution by corrupting the judges, delegating the power of parliament to a council of eighteen, claiming absolute power by saying that laws lay in his mouth, tampering with elections, interfering with the appointment of sheriffs, exacting arbitrary taxes and purveyances, interfering with law courts, raising forced loans, imprisoning his subjects without trial, alienating the royal estates, and extending his prerogative beyond all ancient precedents. Both the Houses voted that "for the greater security and tranquillity of the nation and the good of the realm", the king should be deposed. He was deprived of his royal office "on account of his perjuries, cruelties and many other crimes".

Articles of accusation.

Richard fell not because of his vengeance in 1397 but because of his foolish policy since 1398 which created a general feeling of insecurity and hostility in the county. He did not trust the nation and he made no effort to keep his power.

In the course of the Angevin period we have seen a tendency towards two parties in the English politics. One party is the king's or *court party*. It consisted mostly of king's favourites, native and foreign, and his councillors, ministers and officers who supported absolutist ideas and carried out his commands. The king attempted to check the opposition by promoting his own men. The other party was the *opposition party* which was purely baronial at first, and then parliamentary, but led by barons. It considered itself a constitutional party. Its leaders were prominent barons. This party triumphed in 1399 when Henry IV came to the throne. Its object was to limit the monarchy by the parliament as regards taxation, legislation, administration. It tried to control the Council and to determine its composition. The party

Two parties.

enjoyed the support of the clergy. It was therefore orthodox and anti-reform in religious matters. It also secured the support of the propertied class after 1381. Its great defect was that it was led by the princes of blood who had personal feuds and hatred and who did not care so much for reform as for possession of power. The court party depended on the king and his conception of the royal prerogative.

Royal Prerogative.

In English constitutional law 'prerogative' means the precedence taken by the king in virtue of his capacity of a king. Such precedence is two-fold. Firstly, there is the *private* or *ordinary* prerogative by which the king enjoys not only the same rights of Englishmen but more e.g. wardship. Hence is the lawyer's statement "the king is the prerogative." Secondly, there is the *public prerogative*. It is a unique right and "consists in an undefined royal authority in virtue of which the king legislates and taxes otherwise than through parliament, and judges otherwise than through the common law courts" (Stubbs). At the conquest the *plenitudo potestatis* (fullness of power) was resident in the king, as "all was in the king and all came from him in the beginning. In time he delegated some of his powers of taxation and legislation to parliament and of judicature to courts. But he still retained an undelegated residuum of every kind, a sort of reserve power. The place of this residuum is the king's council. If this residuum came in contact with the delegated powers of parliament and courts, the king claimed that the undelegated overrode them. In *legislation* the parliament only petitions but the king makes law. Therefore the king as the source of law can issue laws without receiving petitions. *In justice* the king is regarded by all lawyers as the fountain of justice and they use his name in daily writs. It was natural for the king

Private.

Public.

Its origin.

Its action in legislation.

In justice.

to interfere in the current which flows from him and to send out new currents. *In finance* the accounts of the army, the navy, and the courts of law were kept in the wardrobe account along with the expenses of the royal stables and nursery. This shows that the government was a matter of private household.

In finance.

Richard II had a theory of the royal prerogative. He had before him the theory of anti-papal schoolmen like Wycliffe who asserted that kings held directly of God. This theory was put forward in the interest of the independence of the secular power from the ecclesiastical power. But it involved the sacrifice of the individual or group liberty within the state. Richard's theory of Divine Right of kings made the king's power indefinable and irresponsible.

Richard's conception of royal prerogative.

In the beginning of his reign the Archbishop of Canterbury emphasized strongly the hereditary right of Richard in opposition to the possible claims of John of Gaunt. He stated "the noble grace which god hath given you nor by election nor by any collateral way but only by right of succession". Compare this with the statement of the Archbishop at the coronation of John in 1199, which ran "Hear, all of you, and be it known that no one has an antecedent right to succeed another in the kingdom, unless he shall have been unanimously elected, under the guidance of the Holy Spirit, on account of the superior merits of his character, ... not as the son of king nor as born of royal ancestry. . . Thus those who excel in vigour are elevated to kingly dignity. But if any relative of a deceased king excel others in merit, all should the more readily and zealously consent to his election . . . We unanimously elected him (John) for his merits and his royal blood."

At the time of his deposition Richard II refused to renounce the spiritual honour impressed on him by his unction which could not be renounced. His was the theory of hereditary monarchy divine through the unction of coronation. In the parliamentary roll of

1390 we find Richard saying that the king's prerogative is unaffected by any legislation passed in his reign or by his predecessors. In the articles of his deposition the article (16) asserts that the king said that the laws were in his mouth and often in his own breast, and that he alone could change and frame the laws of the kingdom. This meant that the king issued laws and that much law remained unissued in his breast, that is, the equity and special law administered in his council. The article (26) asserted that Richard said that the life and property of every liegemen lay at his royal will without sentence of forfeiture.

1399 and 1689 compared.

The revolution of 1399 and that of 1689 afford some similarities and differences. During both the revolutions theories of royal prerogative and divine hereditary rights were held strongly by the reigning monarchs. The active agents of the revolution were members of the landed aristocracy which acquired great influence and share in the political power, and diminished the absolute power of the crown in religious and civil matters. The successors were qualified as kings by a parliamentary title. On the other hand the revolution of 1399 was based on a precedent of 1327 and the coronation oath; that of 1689 was based on a political theory of social contract. Henry IV claimed the throne on the ground of descent, conquest and bad government of Richard II who had broken the government and the good laws of the realm. William III was a successor by the invitation and grace of parliament. The revolution of 1399 preserved and extended the forms of civil liberty but checked religious liberty of thought. It stood for stability and conservatism in politics. The revolution of 1689 opened the door to civil as well as religious liberty. It stood for liberty and expansion.

Similarities.

Differences.

The revolution of 1399 was constitutional in character. The king consented to the demands of the constitutional party which was supported by parlia-

ment. The main lines of a constitutional conception of monarchy were laid down. The title to the crown became parliamentary. Henry IV's title was made real by the support of parliament, and he pledged to recognise the rights of parliament.

Relations of the state and church. (1216-1377) under Henry III.

In the revolt of the barons against John (1208-1215) the church had taken the lead under Stephen Langton, the Archbishop of Canterbury. It became the champion of liberty against the absolutism of the royal power. But John's submission to the Pope and papal support given to the king against the barons created a new danger both to the feudal freedom and church liberty in England. Papacy began to claim feudal as well as spiritual supremacy over England from the time of John's surrender and fealty to the pope in 1213. This alliance was dangerous both to the absolutist claims and independence of the royal power and the church in England as was conceived by the Normans and settled under Henry I and Henry II. As long as Stephen Langton lived the papal interference was less, though Henry III was not interested in the independence of the national church. After the death of Langton in 1228 who had in 1220 obtained a promise from the Pope that during his lifetime no foreign legate would be sent to England, papal demands for money, such as one-tenth of all movables from the clergy and the laity (in 1229) increased and were granted by the clergy. An increasing number of appointments of Italian foreigners was made to English livings by the Popes. In 1245 the English nobles and the commonalty protested against papal exactions. Robert Grosseteste, a great scholar, and bishop of Lincoln who was interested in reforms opposed and remonstrated with the pope against the papal greed and demands for money. But Henry III who was interested in the crown of Sicily for his son Edmund accepted it (1255) from the Pope and agreed to help the Pope by

Papal claims and interference.

paying his expenses to be incurred in the war against the Emperor. Henry did not care for the independence of the church or even the state as against the Pope. He demanded for the Pope one-third of the revenue of England in 1257. This led to the baronial war of 1258-1267 in which the clergy joined the barons. Papacy helped Henry III during this struggle. Thus the alliance of the king and the papacy was hurtful to English liberty and the pecuniary interests of England.

Under Edward I.

The claim of papal suzerainty and tribute from England was repudiated by Edward I. Papal interference had increased. By the giving of the pall without which no metropolitan could exercise jurisdiction the Popes had obtained a real hold over the appointment of the archbishops of England. By sending legates or representatives (1219) appointed either for life or for some special purpose who during the tenure of their office superseded the rights of the metropolitan, the Popes were able to keep in check the archbishops when they were appointed and to rule England in some ways. But from the time of Edward I there was a steady growth of national opposition to the Pope. And there was also always within the English church itself a large and influential party strongly opposed to the spiritual assumptions and temporal pretensions of the pope.

Papacy and the king.

Resistance to Papal taxation.

There was resistance shown to the papal taxation and tribute and other papal demands and interferences. By the Bull of Clericis Laicos in 1296 Boniface VIII had forbidden the clergy to pay taxes to any lay power. Edward I would not tolerate this. The clergy submitted to the king, and the Pope had to repeal it.

Under Edward III.

In 1366 the Pope was refused the tribute which John had started to pay. Edward III did this with the consent of the parliament on the ground that no king could put himself or his realm or his people in such subjection

without the consent of the barons, prelates and commons. The Good Parliament of 1376 protested against payments to Rome and refused to pay the arrears of John's tribute claimed by the Popes. The clergy also objected to papal demands for first fruits and gifts and other impositions.

Resistance to Papal appointments.

Secondly, there was also great resistance made to the 'provision' or patronage distributed by the Pope to foreign clergy at the cost of English livings. In 1351 the statute of Provisors was passed to prevent the Pope from presenting foreigners to English livings. They used to be non-resident and drained money out of England. It also provided that no papal summonses, sentences or excommunations were to be brought into England.

Resistance to Papal interference in judicial matters.

Thirdly, there was also resistance offered to the papal claim of authority over English law courts by way of appeal. In the thirteenth century this practice had reached its height. Popes made profits out of it and had some control over them.

The statute of Praemunire (1353) forbade the referring of suits cognisable in the king's courts to any foreign court on pain of outlawry.

These measures and this anti-papal attitude were due to the growth of national feeling in the country, and amongst the clergy and the kings. They would not tolerate foreign interference in any form.

Under Richard II.

The statutes of Provisors (1390) and of Praemunire (1393) were re-enacted under Richard II, and additional penalties were laid down in the shape of forfeiture of goods if any one obtained any bull or other legal instruments from Rome.

Relation of the king to the clergy.

The king's control over the clergy of the kingdom got stricter and closer. The taxation of spiritualities by the king came in the thirteenth century. The clergies voted taxes either in their own representative

convocations or for sometime (1209-1322) in the national parliament. Their attempt under Archbishop Winchelsea to refuse to pay any taxes in consonance with the Papal Bull (1296) had failed. Edward I established the royal right of taxing the clerical property. In 1307 the statute of Carlyle was passed to prevent the taxation of and imposition on monasteries, priories and religious houses by their heads and by alien superiors of various orders residing in the kingdom without the consent of the king and nobility, it being contrary to the laws and customs of the realm. This practice had led to the oppression of the religious inmates and servants and the service of God had diminished, and alms giving had decreased. This law was passed in a parliament with the counsel and consent of his barons, nobles and the commons of his kingdom. Such taxes or impositions if levied on the goods of these monasteries and houses were not to be sent out of the kingdom.

Under Edward I.

In the Articuli Cleri of 1316 the power of the king's temporal court to discuss the matter debated on different grounds between temporal and spiritual judges according as it may seem expedient to it was asserted, notwithstanding any spiritual judgment arrived at in the spiritual court. The king also asserted his right to issue letters to ecclesiastical judges to absolve a person from excommunication in case king's liberty was prejudiced by it.

Under Edward II.

Thus the privileges of the clergy were either annulled or diminished. The clergy were compelled to appear, when summoned, before a civil court. Boniface VIII failed to save them from royal taxation.

There was a growing feeling against the wealth and luxury of the clergy and the employment of the clergy in secular affairs. In 1371 the Parliament demanded the exclusion of the clergy from the great offices of the realm. The king agreed. John Wycliffe (1320-1384) represented the national opposi-

Wycliffe and his ideas of religious reformation.

tion to the Pope and the sinful and temporal living of the clergy. He asserted that "dominion was founded in grace", that is, no one could rightly exercise authority unless he was a good man. He taught that the clergy should exercise "ecclesiastical dominion" over the lives of men, but should not accept secular employment. He attacked the higher clergy for their immorality and wealth and preached the doctrine of apostolic poverty against the "possessioner" monks who had large estates. He advocated the disendowment of the church and asserted the right of the crown to seize the temporal possessions of the church. He opposed papal provisions and taxes or exactions. He rejected the doctrine of transubstantiation, and began to translate the Bible into English (1380). He declared that the sacred scripture afforded a sufficient guide for conduct and that a godly life, based on the teaching of Christ, was more important than sacraments. According to him the church consisted of all who had been saved through Christ and through the clergy alone. He organised (1381) the "poor preachers" or Lollards mostly Oxfordmen whose learning, piety, and simple life offered a strong contrast to the immorality, laziness and growing wealth of the friars. In 1382 he was condemned in the papal Council as a heretic owing to his denial of transubstantiation and his rejection of auricular confession. Lollards continued their preachings but were persecuted and tried to be crushed. In 1382 an act was passed against heretical preaching by evil persons who were going from place to place under dissimulation of great holiness and without the licence of the Pope. Lollardy was considered a great peril to the realm. They and their helpers were to be arrested and imprisoned till they agreed to the law and reason of the Holy Church.

Lollards.

In 1397 a new definition of treason was tried to be established by Richard II. Every person who compasses or purposes the death of the king or to depose him or

Law of Treason.

render up his liege homage or raises people and rides against the king to make war within his realm shall be judged a traitor of high treason after being duly attainted and judged in Parliament. His lands and liberties were to be confiscated.

CHAPTER X

THE LANCASTRIAN PERIOD (1399-1461).

Henry IV (1399-1413) claimed the crown by right of conquest and of descent. His real claim however rested only on conquests and on the assent of the parliament. The right of Edmund Mortimer, the Earl of March, was passed over. Thus he was for all intents and purposes an elective king who came to the throne to give the realm good governance. He accepted the theory that the kings can be deposed for misrule. Constitutional monarchy may be said to have begun with him.

Henry IV.

Constitutional monarchy.

The revolutionary settlement made by Henry's parliaments has a great constitutional significance. In the first parliament of 1399 a promise was made that "all old franchises and liberties would be preserved, that justice would be administered without respect of persons, and that the king would be counselled and governed not by his own proper will but by the common advice and consent of the honourable, and sage persons of the realm". After his coronation, on the petition of the Commons, the acts of the Parliament of 1397-1398 were abrogated and those of the Merciless Parliament of 1388 were rehabilitated. Richard's adherents and accomplices were punished. The parliament resolved that the king should not make grants of land or bestow offices of profit without the advice of his Council. This the king refused to accept. The judgment against Thomas Haxey which adjudged him a traitor in 1399 was annulled as erroneous on the ground that it was contrary to the right and the custom which had been

Lancastrian settlement.

used before in parliament and to the customs of the Commons. Thus freedom of debate was recognised.

His supporters.

He was supported by the party of the Lords Appellant, and by the orthodox church, and opposed by friends of Richard II, and of the Earl of March, by the discontented and turbulent Percies who were his own supporters. He however put down the baronial rebellions.

The king against heretics.

In 1401 was passed the statute concerning the burning of heretics. The clergy proposed the measure and the king and the commons got it passed. Heretics or Lollards who refused to abjure their opinions were to be suppressed by force, that is, to be handed over to secular authorities and publicly burned. Archbishop Arundel was its chief promoter. Teaching and preaching without a license from a bishop was forbidden.

Parliamentary privileges and powers.

In the parliament of 1401 Sir Arnold Savage, the Speaker, asked for the privileges of parliament as regards freedom of debate and deliberation. He pleaded for more ample time to discuss the matters laid before the House and for freedom of debate, complaining that certain persons gave garbled versions to the King, and that the Commons should have good advice and deliberation without being suddenly called upon to reply to the most important matters at the end of parliament. To the first two the king consented. The king was not to take notice of the matters before they were discussed in parliament, and members were excused for matters spoken in parliament.

Attack on the royal house-hold.

In matters of legislation the Commons demanded that responses to their petitions should be made before they made any grants. The king however politely, evaded to accept this principle of 'redress preceding supply', as he did not wish to change the good customs

and usages of the realm. In 1403 freedom from arrest was recognised both for members and their servants during the session of the parliament (Cf. 1429, 1453, 1460). In the parliament of 1404 the speaker made complaints in matters of administration. It was stated that the chief cause of king's poverty was his extravagance in the household and also due to his grants to favourites. These charges were grossly exaggerated. It was the wars and rebellions which had cut short the receipts of the crown and increased his expenditure. But the king obtained a liberal grant only after he had given solemn pledges for the reformation of the household and had agreed to make over the grants voted to be administered by "treasurers for war" appointed by parliament. The king was made to submit to a reduction of his household and a revision of his personal expenditure and his civil list was put at £12,000/- per annum. This was however not practical and did not last long.

In the parliament of 1404 the commons again urged that "the king should live of his own", that is, he should meet all his expenses out of the ordinary revenue derived from customs, ferms of the counties, feudal dues, and forests. This was however quite impossible. They petitioned the king to resume all grants of lands, tenements, and pensions given since the year 1367. The knights also raised the question of the disendowment of the church as the clergy helped the king in no way.

In the parliament of 1406 a demand for good government and a protest against the 'rascalry' composing the king's household was made. Auditors were appointed to audit the account of the grants of 1404. And the succession was settled in Henry IV and his male heirs. The Commons elected a committee to supervise petitions when put in the statute forms. A great scheme of constitutional reform consisting of 31 articles was finally presented. They were accepted by the king with great reluctance. The king was to

A scheme of constitutional reform.

do nothing without the consent of the 'Continual Council' of seventeen. The sheriffs and other officers were to be appointed by the king sitting in the Council. No grants of royal property were to be made without the consent of the councillors. An act was passed in order to prevent the sheriffs packing the parliaments under the secret orders of the king and laid down the manner of electing the knights of the shire in which notice of elections was to be published at least fifteen days before the day of the return.

This scheme meant the supersession of the crown as the executive of the realm and the substitution for it of a sort of ministry dependent on the two Houses. It did not last long. As soon as Henry grew strong and his external and internal troubles vanished, he abolished the Continual Council in 1412.

In 1406 an act was passed against Lollardy. It was accused of being an anti-social movement. It had begun by protesting against the holding of the property by the church but ended by denying all rights of property whatever. Therefore it was stated to be as dangerous to the lay landholder as to the clerical landholder. Lollards were declared dangerous both to the church and state.

Act against Lollardy.

In the parliament of 1407 the commons insisted that a grant should be made by the Commons and assented to by the Lords and the request for it should be made through the speaker. Any other procedure was "in great prejudice and derogation of their liberties". Henry agreed. Thus the Commons asserted their right of participating in taxation, and in conference with the Lords. But it was considered lawful for the Lords to discuss among themselves in the absence of the king, concerning the state of the realm and the remedy needful to it. In like manner the Commons were also to do it. Thus was asserted their right of debate and general deliberation.

Commons' share in taxation and deliberation.

From 1409 there arose a struggle for dominance in the Council between the two parties; one led by the Prince of Wales and the other by the Archbishop Arundale. There were no differences in the constitutional views of these two factions. Both aimed at good government within the realm, were persecutors of Lollards and wanted to intervene in the civil wars of France. It was a strife of individuals rather than of policies or principles. Both were sound Lancastrians. In 1409 Arundale published his thirteen constitutions to stamp out Lollardy in the University of Oxford. The clerks in the University of Oxford resisted. But the mandates of the king and the Council and a bull of the Pope made them submit unwillingly. Yet the doctrines of Lollardy continued to exist and spread in secret.

Two parties.

In the parliament of 1410 there appeared an anti-clerical feeling. The modification of the statute against heretics (1401) was suggested, and the cry of the disendowment of the church and the confiscation of the church property was raised by the knights of the shire. The king refused to consent to these petitions.

Anti-clerical feeling.

The parliament however made great progress under Henry IV.

Henry V (1413-1422) recognising the responsibilities of his office promised to act on the advice of his parliament in high matters of administration, finance and foreign policy.

Henry V.

Henry IV's persecution of Lollards was spasmodic. He never sanctioned a general attack upon them. Some of them were employed in important military and diplomatic posts. He persecuted now and then some insignificant persons in order to conciliate the churchmen to whom he owed the throne. But Henry V was an honest fanatic. Heresy was to be suppressed by striking

Heretics.

down the leaders in high places. He carried on the persecution rigorously with the support of the parliament of 1414.

Parliaments.

In the same parliament in matters of legislation the king agreed to an act providing that petitions should always be enrolled in the statute book exactly as they had been drafted without any change of words or perversion of their original intent. The relations of Henry V with the parliament were cordial.

Henry VI (1422-1461).

Henry VI was a simple but a weak king. England needed a wise and a stern ruler to check the barons. During his minority a Council of Regency appointed by the parliament governed the country protecting and defending the realm and the church. Henry VI was contented to remain, even after coming of age, a puppet in the hands of his ministers. He was also dominated by his clever and strong-willed wife.

Lancastrian experiment.

Its constitutionalism.

The Lancastrian kings depended for their strength and rule on the support of the parliament. They did not question parliamentary claims but ruled in harmony with it. During the early period (1399-1437) there was an unbroken constitutional development when details of government were being perfected and the control over government was being strengthened. But though the Lancastrian rule during this period was constitutional in character, the constitutional progress made during it had outrun administrative order and reform. The constitutional rule of the Lancastrians is called the "Lancastrian experiment". Its essential feature was the establishment of the control of parliament over the details of the administration of the realm by means of the power of the purse it possessed and used. It was a system of government by limited monarchy or in partnership with parliament. This system failed because it was premature, as the

commons were not equal to the task till the seventeenth century.

Lack of governance.

Lack of governance became the chief characteristic of the latter period of the Lancastrian rule (1437-1461), whereas the country required strong rule and strong administrators. Consequently there was a collapse of Lancastrian constitutionalism in the latter period during Henry VI's rule.

Collapse of constitutionalism.

Evils of the period.

The evils of the Lancastrian period were : (1) the impoverishment of the crown, due to the wars and extravagance of previous reigns, due to their own financial needs to meet rebellions and wars, and due to the grants recklessly bestowed on favourites and friends, made the crown powerless and the parliament powerful ; (2) the strength of the parliament due to the part it played in the revolution of 1399 and due to its hold over taxation prevented the king from being active and strong in maintaining order and administering law, but was unable itself to do the executive work and secure respect for law and order ; and (3) as a result of the king's administrative weakness, the evils of livery and maintenance became rampart.

Livery.

Livery was originally an allowance in provision and clothing made to servants of great households. Then it came to be used for clothing given as a crest or badge of service or dependency. Great men granted liberally their livery to all who wished to wear it, because it indulged their vanity. But the poor wore it, because it entitled them to the lord's protection. It was similar to the ancient practice by which every man was bound to have a lord who protected him. In this way lords came to possess a number of armed followers or men who served as soldiers and were used in private wars and illegal usurpations. Thus the system of livery created a kind of bastard feudalism.

Its evil effects.

Minor landholders or the gentry bound themselves by regular

sealed bonds to follow their greater neighbours in peace and war. They did not owe loyalty to the king. The king could not count on raising a national army. He could only depend on the court or the ministerial party of barons. The Livery system was fatal to the maintenance of order because the gatherings of these armed retainers whom the lords were not able to control properly but who were protected by them in all that they did as a point of honour often became organisations for robbery and ravaged the country. It was also by means of these retainers that the great lords were enabled to indulge in the private wars of the period. Liveries also became the badges of the great factions at the court; Lords wore one another's badges by way of compliment. Thus this system involved political mischief and the wars of the fifteenth century were found in it.

Maintenance.

Maintenance indicated that the lord protected his men in a court of law by upholding their suits and by overawing the judges and forcing them to give a verdict in favour of their clients. Thus no justice could be had against a great lord and his retainers. Under this system of livery and maintenance it became impossible to enforce the law against the malefactors who were in the livery of a great lord.

Bankruptcy of the crown.

Henry VI even after he had attained majority, did not show any strength or capacity to rule. He depended on his ministers and councillors for the governance of the realm. But amongst them there were factions who opposed each other. As long as parliament supported the king and had a general control over the finance and policy of the realm, the royal council and the king did not go against it, and constitutionalism was being tried and continued. But as soon as he began to chose and maintain his own councillors and to regulate his household and his finances against the wishes of the parliament, the failure of constitutionalism became evident. In 1451 the

Commons presented a petition that Somerset and his friends and ministers should be deprived of all their offices and banished for life from the court, the king refused to do so, and thus to allow them to interfere in administrative and household matters. Baronial factions at court and in the council increased. Finances were in a bankrupt condition. The executive became weak in checking baronial rebellions, the judicature could not administer law against powerful subjects and barons. The boronial party which was in opposition to the court party allied itself with the parliament and thus weakened the position of the king who had largely to rely not upon national support but on his favourites and one baronial faction. A breach with the Commons took place (1351) when the king sent Thomas Yonge to the tower for petitioning to declare the Duke of York heir to the throne. In this year the parliament revived the practice of impeachment against William de la Pole, Earl of Suffolk. The whole of Henry's reign is occupied by his minority and incapacity, insanity and imbecility. Factions and powerful nobles took advantage of its weakness and disasters caused by foreign warfare to revive claims and interests which the king could not successfully check and prevent.

Recrudescence of feudalism.

Owing to the weakness of the central power the barons who had acquired vast estates by royal grants and marriage connections and who had secured ministerial posts and power, created large bodies of armed personal retainers and secured the loyalty of small land holders to fight for them even against the king. The king could not enforce law or administer justice against these mighty feudal lords or over-mighty subjects and their followers. The weak suffered, and had little protection. The feodalité apanagée which consisted of a number of princes of blood royal endowed with large estates was different from the feodalité territorial of the twelveth century. These princes had claims to succession in varying degrees,

and could easily justify their claims and fight either for share in the power or for the Crown itself. Their followers were not bound by an oath of fealty and homage directly to the king. Hence they were strong and made alliances with the court party or disaffected nobles, the commons and the clergy, as it suited their ambitions and interests. They wanted not only to share in the political power but also to control it through the Council. The king's minority, incapacity, unpopularity and difficulties helped them in their designs. They could not however do this without the support and co-operation of parliament. The Commons had secured great constitutional powers and asserted their control over taxation, legislation and administration to a large extent.

The growth of this new feudalism was helped by the system of indentures. These were agreements made by the king with individual barons under which the king was to pay and the barons were to provide a certain quota of soldiers. It was based on a mercenary basis. The loyalty of the soldiers was to the lord who recruited them or maintained them or protected them and gave them his crests and badges and not to the king direct. They did not form a national army like the Fyrd. The king could not rely on them. He had to keep his own retainers or mercenary troops to meet his constant or immediate needs. This system broke the military power of the king and made him dependent on baronial allies and favourites. But the baronial princes used these feudal followings freely in their personal and dynastic quarrels. They were a source of their strength in the interests and claims on large estates which they had secured, in their share in the control of administration, and in their encroachments on the powers and administration of royal courts and laws.

During this period there had developed internal dissessions amongst these great baronial houses and chiefly between the Lancastrian branch and the Yorkist branch.

The causes of dispute.

There was also a cleavage within the Lancastrian branch itself. The dispute had at its basis one important cause, namely, the theory of an elective and limited monarchy based on a parliamentary title versus the theory of a legitimate monarchy based on hereditary descent in the elder line. Thus there was a dynastic cleavage amongst the barons. The head of the Yorkist was Richard Duke of York and that of the Lancastrian faction outside the ruling house was Edmond, Duke of Somerset, whose party the Queen supported. She made the weak king the nominal head of a faction and thus gravely weakened his position.

The position of Richard, Duke of York.

Richard, Duke of York, asserted his right to attend the Council and raised an opposition against Somerset who was an unpopular minister. York was the heir apparent to the throne and led the opposition to the weak rule of Henry. His right and claims were refused by the Queen. Lancastrian claim rested on the grant of the parliament and prescription and was valid in spite of the defect of geneology. They were the heirs male. The Yorkists were 'heirs general' claiming in female line through Lionel Clarence (elder brother of John of Gaunt) and in male line through Edmund Langley, Duke of York (younger brother of John of Gaunt). There was no Salic law in England. Richard Duke of York had however taken an oath of allegiance to the Lancastrian king and had used the arms of Langley and not of Clarence. This had weakened his claim.

Wars of Roses.

The rivalry between York and Somerset from 1450, the birth of Prince Edward in 1453, and the dismissal of York from Protectorship in 1455 led to the wars of the Roses (1455-1461). York took up arms. His position of the heir apparent was lost. But he was determined to exercise power as the chief adviser of the king. Somerset was killed. York became the Protector a second time during Henry's second insanity. Queen opposed York. Yorkists were defeated in 1459. The

parliament of 1459 which was largely an assembly of Lancastrian nominees passed a great bill of attainder against the Yorkists who were adjudged to suffer the penalties of high treason. All the lords took a solemn oath binding themselves to preserve allegiance to the king and to accept Edward, Prince of Wales, as the natural born heir to the throne. There was however no wise, merciful and firm government established in the country and the Yorkist strongholds were not destroyed. The queen and her friends failed to achieve this. In 1460 the Yorkists were successful. The Duke of York claimed the realm and the crown of England in the parliament of 1460 as the heir of king Richard II and proposed to be crowned without delay. The parliament annulled the attainders of Yorkist lords. But Richard Duke of York's claims were not supported by it as it involved the repudiation of the right of the parliament to determine the succession and the adoption of a purely legitimist theory. Parliament would not accept supercession of Henry VI. A compromise was however arrived at. Henry VI was to wear the crown for the rest of his life, while the Duke of York was to be recognised as the heir to the throne. Nothing was said of Prince Edward. The king formally gave his consent. An act of parliament ratified the bargain and another act repeated the statute of 1407 which had confined the succession to male heirs. York with his sons did homage to the king as heir to the throne and proclaimed himself the Protector. But Queen Margaret refused to accept this compromise, and raised an army for the rights of Prince Edward. At first Lancastrians succeeded and Richard, Duke of York was slain. But ultimately Edward Duke of York entered London in 1461 and was declared king, and was crowned king after the Yorkists were successful. Queen Margaret and Prince Edward had to flee.

The struggle of the wars of the Roses was not based on constitutional principles. It did not involve any constitutional question of reform in the state. It was a dynastic civil war between two Houses in which

the barons took sides and a prominent part. They were first fought to decide who should be the king's adviser and then after some time who should be the king, Henry VI or Duke of York.

The position of the barons in the fifteenth century was very strong as compared with that of the monarchy.

The barons and the monarchy.

They were interfering in the Central Government through the Council in normal times or during the minority or insanity of the king by way of regency or protectorate. They had made the position of the king weak by attacking his counsellors and ministers when they were in opposition or by interfering in his administration when allied with him. Thus administrative unity and strength which was necessary for effective government were lost. In local matters they had made the administration of law and justice impossible by their system of livery and maintenance. They threatened local courts and sheriffs in their work when their private interests were concerned. Consequently there was great disorder and unlawful activities in the country. People wanted peace and order and therefore a strong government which would maintain the power of law and justice and deal without fear or favour with criminals and overmighty subjects.

Thus arose the need of a new monarchy which would be strong enough to deal with these abuses and restore security of life, liberty and property to the people and respect for the governmental authority.

The causes of the fall of the Lancanstrians.

The causes of the fall of the Lancastrians were (1) Their lack of governance, that is, weakness and incapacity in matters of doing justice and maintaining the administration of police and law. Consequently they lost popular support. Jack Cade's rebellion in 1450 showed the political grievances of the people, such as extortion of tax-gatherers, interference with elections, exclusion of the lords of royal blood from the king's councils and loss of Normandy,

(2) the power of the barons due to their large estates, their large bands of armed retainers and their political prestige and share in the administration; (3) the weakness of their title to the throne, being the younger line; (4) the strength of the House of York because of its wealth and power, political ability and popularity, and their legitimate title to the throne, being the elder line; (5) the exhaustion of the nation because of the wars and internal disorders and its desire for peace at any price; (6) the failure of Lancastrian foreign policy; and (7) the popular distrust of the queen and her ministers who fought for the rights of her husband and her son. She symbolised the pro-French policy and the loss of France. She made Henry VI the leader of a party instead of keeping him above all parties, and showed open hostility to the Duke of York.

The Electoral Laws of Parliament.

The electoral laws relating to the representatives of shires were fixed early in the fifteenth century. They aimed at firstly regular elections. In 1406 and 1430 laws were enacted laying down that the sheriff on the one side and electors on the other should enter into an indenture (contract) duly certifying under their seals the names of those persons who were freely chosen to be the members of parliament. In 1410 and in 1430 it was enacted that there should be a penalty against sheriff's misconduct at elections, and the abuses in election returns should be made a matter of inquiry by the justices of assize. Secondly, they aimed at the independence of members. In 1413 and 1430 it was laid down that the members of parliament must be resident in the shire or borough which they represented. In 1445 it was enacted that the knights of the shire to be chosen for parliament should be notable knights and squires of the same counties for which they were to be chosen. No yeomen or those of lower status were to stand for election or to be elected. Thirdly they aimed at a sound electorate. In 1430 a law was passed which laid down that the electors of Knights of the shire must be forty shillings free-

holders and that the elected must be residents of the shires. Hitherto all men whose tenure required them to do so were theoretically supposed to attend the county court when an election was on hand. The reason given for the change in the suffrage was that a rabble of poverty stricken peasants might swamp the solid landed yeoman of the shire. The result of this measure was that it disenfranchised copyholders and owners of personality, and prevented the people of small substance and no value from claiming an equal voice with the most worthy knights and squires and also checked riots and quarrels amongst the gentlemen and other people of the same counties. But whoever might be the voters the great landowners possessed and continued to possess the real deciding voice at the elections and practically chose the knights of the shire, except when the sheriff, acting under the pressure of the king and the Council ignored all voters whatsoever and returned some crown nominees. From about the middle of the fifteenth century, according to Pollard, people began to take an interest in parliament, to solicit candidature and to regard the franchise as a privilege and not merely as a duty.

In the matter of privileges the king in 1430 with the advice of lords and at the special request of the Commons granted by the authority of the parliament in the case of William Larke the privilege of a member's servant to be free from arrest during the time of the parliamentary session, except for treason, felony or surety of the peace. In 1460 in the case of Walter Clerk the privilege of a member's freedom from arrest during the session of parliament was again asserted, and allowed by the king with the advice and assent of the parliament.

In 1460 the parliament brought ready-made bills and the king was asked to say yes or no. All changes in those bills were to take place in the presence of those who had brought forward the bills.

The problem of checking the royal power was to

be solved when the doctrine of the responsibility of ministers, that is, of the executive to the parliament came to be fully accepted. There were however attempts made in the pre-Tudor period in three ways. Firstly, election of the great officers of state was to be done in the parliament and by the king. This was claimed as a right in 1244 and in succeeding years by the barons. Again it was claimed and acquired by the Lords Ordainers in 1311. Edward III conceded this right to parliament in 1341 but repudiated it afterwards. During the reign of Richard II the commons petitioned for it. It was granted. Generally the Commons approved of the king's nominations which were announced in the parliament. Secondly, the ministers were made to take an oath in the parliament but it was not an effective device. Thirdly, ministers were called to account for their conduct while in office. Kings used to call them to account for their conduct. Parliament began to call them to account in order to remedy public evils. In 1376 we get the impeachment of Richard Lyons and Lord Latimer by the Commons. Again 1386 the chancellor Michael de la Pole, Earl of Suffolk was impeached. Though the ministers pleaded that whatever they did was done under king's orders, they were tried and sentenced. In 1450 William de la Pole, Duke of Suffolk was impeached, banished and murdered. These impeachments tried to establish the doctrine that the great officers of the state were to regard themselves as responsible to the constitution and nation and not to the king alone. They could not violate the constitution even at the king's instance.

Check on ministers.

Impeachments.

Another expedient used was that of attainder. An act of attainder was an act of legislature pronouncing condemnation without any form of trial. As soon as the wars of the Roses began in 1455 the victorious side employed the subservient parliament to pass acts of attainder against the leaders of the other side. Lanca-

Attainder.

strians and Yorkists passed them against one another, confiscating the property, and banishing or executing the persons of their enemies. The third expedient was the Act of 'appeal' by lords, by which they accused other lords of treason, and got them condemned and sentenced. This was used in 1388 by the Lords Appellants and in 1397 by the king with the help of appealing lords. But these latter two expedients of attainder and appeal were baronial and not regular and important. They fell into disuse.

Appeal.

The demand that 'the king should live of his own' was first found in the Ordinances of 1311 and thereafter recurred constantly. It meant that the king should live in time of peace on his ordinary revenue without taxing his subjects. His ordinary income was derived from the firms of the counties, that is, revenue from royal estates, profits of jurisdiction, and feudal and customary dues and escheats. His ordinary expenses were those of his household under which came the whole account of the army, navy and judicature along with the expenses of the royal table. His foreign entaglements and favourites and the baronial rebellions absorbed most of his income. Therefore his ordinary income could not cover the usual expenditure. If he could have lived without any taxation he would have dispensed with the calling of a parliament altogether. But the chief cause of the demand was that the king failed to make ordinary revenue meet the ordinary expenditure. Whenever taxation was increased the people not having any means of auditing the income and expenditure assumed that the extravagance of the court and the greediness of the courtiers were the causes. This gave them a point of attack against the courtiers and for demanding constitutional reforms, such as limitation of taxation, and control and audit of accounts, and appropriations of taxes in order to check the impoverishment of the crown.

King should live of his own.

The means adopted to make him live of his own

were (1) restrictions on the king's power of alienating crown property as was done under Henry III and Edward II. It was done under one of the Ordinances of 1311. It forbade gifts without the consent of the Lords Ordainers. Richard II however tried to create new baronage by gifts of land. But Michael de la Pole and others who got such gifts were impeached. Such gifts were prevented by parliamentary action in 1399, 1404 and 1406. (2) Direct restraints were put on expenditure. Edward III was put on an allowance of ten pounds daily. In the reign of Richard II the bill of Haxey complained about the expenses of bishops and ladies in the royal court. (3) Control over ministers was tried to be established by the method of appointment and oath in parliament and by impeachment. (4) Apporpriation of grants to specific purposes was secured, that is, the parliament determined the way in which the grant was to be applied. (5) Lastly, the audit of public accounts was established to find out that the money was spent according to the directions of the parliament by the acts of 1341 and 1349.

Changes in social and economic conditions.

Before 1348 the system of forced labour of villeins was being replaced by the commutation of services for rent. The Black Death in 1348 swept away one third of the population of the country. This decreased the number of unfree labourers or villeins enormously and raised the price of labour. The lords could not find new tenants who would take up vacant holdings on the old conditions of service labour. To meet this situation many landlords gave up farming their demesne and let out their estates which they broke into holdings on the "stock and land" lease system. Others threw it into sheep farms. But many strove to keep on the old services as far possible, supplementing them by the costly expedient of hiring free labour.

In 1349 and 1351 however came class legislation in the shape of statutes of labourers. It checked the free peasant from demanding what he pleased for the

hire of his hands. Labourers owing to the dimunition in their numbers caused by the Black Death demanded higher wages. Landlords tried to exact the old services from their tenants instead of rent for which their servcies had been commuted by some landlords, and to limit the wages paid to free labourers. The statutes compelled landlords to pay and the labourers to accept the rate of wages current before the Black Death, prohibited labourers from changing their residence or breaking contracts, and prevented a rise in the price of goods. Thus these statutes tried to regulate the economic life of the people. It was believed in the middle ages that prices and wages could be fixed by law. The state would not allow any disestablishment of the old order or any change in the status or relations of classes and orders of society. The state had to perform the role of the preserver of the social order and of an ultimate arbitrator in social, religious and political matters. These new statutes were not accepted without resistance by a sturdy and turbulent peasantry. The landowners failed to achieve their objects with the help of these statutes. Many employers gave much higher wages than these statutes allowed. Those who asked for the help of the statutes came to be hated. Both the landless worker and the ordinary villein began to hate the system under which they lived. They revolted against it.

The Peasant's Revolt of 1381 was due to the hatred of the peasants for the compulsory services of villeinage, due to the preaching of the Lollard and others on the natural equality of man, and due to the imposition of the poll-tax. They demanded the abolition of servile tenure, that is, compulsory service on land and the substitution of money rent for land. The Revolt did not result in the extinction of the villeinage. But it began to decline. The immediate consequence of the rising was not any general abandonment by the lords of their disputed rights. Many reasserted their rights and began to tighten the relaxed bonds of serfdom. The old system went on.

The villeinage however transformed itself into a system of free tenures during the fifty years that followed the great rising, not in consequence of that rising but as a result of the rural economic revolution of the fifteenth century. The lords preferred to work more and more their estates in pasturage rather than by cultivation. Consequently they had less and less interest in exacting the old servile corvées. Villeinage disappeared by slow degrees and owing to economic causes. It was not killed once and for all by the rebellion of 1381. Thus we find socio-economic feudalism disappearing from the social and economic organisation of the country from the 14th century.

Parliament and the Council.

The existed jealousy between the parliament and the Council in matters of legislation, taxation and judicature. The king's Council originally possessed all these powers. The parliament wanted all of them and not only those delegated to be exercised constitutionally through the newly developed channels or institutions. In matters of legislation the parliament presented a petition in 1389 asking that the king's Council should not make any ordinance against the law of the land. But the king replied "let it be done as heretofore saving the royal prerogative". In matters of taxation also the king-in-Council continued to levy some taxes by its own orders. In matters of justice the parliament began in 1351 a series of petitions against the jurisdiction usurped by the Council. The Commons demanded that no man should be made to answer for his freehold or anything touching his life or limb or be fined before the Council save by the customary process of law in a regular court of law and upon the presentment of a jury. But these petitions and acts of parliament did not prove effective. The king-in-Council continued to exercise the power.

King's Council.

The king's Council had become the battleground of parties, the court and the constitutional, from 1258. The battle of the constitution raged round it. The constitu-

tional or baronial party claimed that it should be a committee of parliament in general. It was to be a public committee. The royalist or court party claimed that it should be a familiar secret cabinet of the king. It was to be a private committee. Under the Lancastrians the parliament gained control over the Council as regards its composition. In 1406 the king was forced to nominate councillors who were acceptable to the parliament and in whom the parliament could feel confidence. This was to be done by nominating members publicly in the parliament. As a result of this there were many commoners in the Council from 1399-1437. Many councillors were also members of the parliament. But this scheme of composition of the Council began to collapse in 1437 when Henry VI came of age. During his minority baronial oligarchy was the sole master of the realm. The Council was nominated and elected by Lords in parliament. It was given great power in the nomination to the offices, benefices and the control of the treasury. The whole royal prerogative was in its hands. It was irremovable and filled its own vacancies. The result of its rule was bad. It ceased to redress grievances and repress violence. After his minority the Council came under his control and influence. He nominated its members without reference to the parliament. It became a familiar and secret council and an organ of despotism during the latter part of his reign. From 1437 there is a collapse of constitutionalism or parliamentarism and a movement towards a new monarchy. The oligarchy exploited the state for its own profit and therefore split up and destroyed itself in the wars of the Roses.

Control of Parliament over the Council.

After 1399 the parliament also gained control over the Council as regards its conduct or action. Parliament fixed wages of councillors. It regulated its procedure by rigorous rules, and imposed an oath on councillors that they would observe these rules, The results of this control were that the parliament reposed confidence in the Council, ceased to petition

against its jurisdiction, and empowered it almost every year to get large sums of money by giving securities on the proceeds of future taxes. The power of anticipating taxes by raising loans on their security gave the Council complete management of finance.

King and the Council.

Certain of the great officials were always members of the Council and every councillor had practically a life-tenure. Thus being independent of the king in tenure of office these councillors claimed to control the king in normal times, and to take his place during his minority. The king used to be generally absent from the Council.

In normal times.

In normal times there was the indirect control of the Chancellor who had to impose the Great Seal on documents. But before doing so he interposed remonstrances. This power really strengthened the Council of which he was a member and before which he could place any complaints. There was also the direct control of the Council. In 1399 it was enacted that not only every bill should be endorsed by the Great Seal but also that the grant which diminished revenue should be given with the consent of the Council. In 1406 the 31 regulations made the advice of the Council necessary in regard to all letters addressed by the king. In 1444 it was secured that every grant must be under the notice of the Council.

During minority.

During king's minority the Council became a Council of Regency. In normal times it was a channel of government but during a minority it became the fountain of government. It controlled finance and trade, and mediated relations between the English Church and the Papacy. It preserved the cases of armed violence for itself and it claimed the exercise and execution of all the powers of sovereignty. In the minorities of Henry III, Edward III, Richard II and Henry VI the Regency had increased the importance of the royal Council. In the time of Richard II it had become a

power coordinate with the king. It evercised great authority in the reign of Henry IV owing to his bad health, weak claim and poverty. It dealt with finance, trade, church questions, the interpretation of treaties and the maintenance of order and acted as a court of appeal. The parliament was however anxious to curtail the authority of the Council which was prejudicial to its own, and had succeeded in securing control of the nomination of its members. In 1406 a Continual Council of seventeen was appointed to hold office until next parliament in order to choose sheriffs and to give grants. In 1412 however the Continual Council was abolished. In 1437 Henry VI began to appoint members of the Council himself and during the latter part of his reign a small Privy Council split off from the big or Ordinary Council.

CHAPTER XI

THE YORKIST PERIOD (1461-1485).

Edward IV's accession was a 'legitimist restoration', warranted by the urgent need of a strong and good government and not by hereditary claims. The strength of the House of York was due to the popularity of its individual members, their wealth, and their claim to the throne. Their success led to the establishment of an absolute monarchy. Parliament was rarely summoned by them. They legislated through the Council, imposed arbitrary taxes (benevolences) and interfered with the liberty of the subject by illegal imprisonment. At the end of the fifteenth century we donot find the Commons associated in the government of the country.

Edward IV.

Edward IV (1461-1483) was recognised as de jure king by reason of his descent from Lionel Duke of Clarence. The theory set forth by the Yorkists was that he and his ancestors had been the true possessors of the crown since the death of Richard II and no parliamentary proceedings, such as those of 1399, had any power to alienate the right of succession from the elder line. But it was the Yorkist military success that gave him throne.

First Parliament.

The first Yorkist parliament of 1461 passed a bill of attainder against a number of Henry VI's followers and provided for the confiscation of their lands and possessions. The Commons recognised the new king as their lawful hereditary monarch, stigmatised the Lancastrian kings as usurpers and petitioned that all alienations of real property since 1399 might be declared invalid; but they expressed the hope that the judicial decisions of the last sixty years might be allowed to stand. The king

was pleased to grant their petitions and wisely added a confirmation of all charters, pardons, grants of office and patents made by the Lancastrians save the attainder list. The death of Prince Edward, son of Henry VI, in 1471 ruined the cause of the Lancastrians. The legitimate descendants of Henry IV were extinct and Henry VI was murdered in the same year.

The king and the Parliament.

Edward IV made no sweeping innovations or recast the institutions of the country. It seems to have been his main desire to avoid the summoning of parliaments and to live of his own, that is, on the normal revenues of the crown. These were however swollen by confiscations, by increase in the exports of wool, and by receipts from law courts due to exorbitant fines. He did not generally ask for money grants. After 1471 he became very powerful and rich. In 1472 the Lords made money grants without reference to the Commons. From 1475 to 1483 the parliament met only once and then made no grants. Not a single law which promoted freedom or remedied the abuses of power was even proposed, much less passed. He exacted benevolences (1473), that is, forced loans or contributions without parliamentary authority. They brought in large sums.

His administration.

But his administration was weak. The nobles retained great power and frequently oppressed the people. They were however powerless to raise rebellions as there were no rival claimants to the throne, who could have rallied the forces of discontent. The reigns of Edward V (1483) and Richard III (1483-1485) have no events of constitutional significance to record. In 1484 the benevolences were however declared illegal and annulled.

The character of the Yorkist rule.

The rule of the Yorkists was in the main unconstitutional. Though the forms of government could not be altered and parliamentary authority was not repudiated, they ruled largely without sum-

moning parliaments. Edward IV held sessions at long intervals. During twenty-five years there were only seven parliaments. Whenever they summoned them, the most insignificant matters were brought before them. Only acts of attainder were passed. Benevolences were unconstitutional and were a sign of absolute power. The Yorkist avoided the parliamentary control of appropriation of supply and audit of accounts. Armies were raised by commissions of array by the command of the king without the consent of the parliament and were to be paid by districts which raised them.

The Yorkists practised judicial cruelties and used torture for obtaining evidence. High treason cases were dealt with great severity. No appeals were allowed. No trial by jury was used. Though their rule was stronger than that of the Lancastrians it did not remedy the evils of disorder. There was still perversion of justice, forcible entries into private houses, riots and robberies, and the evil of livery and maintenance. The House of York failed to justify its existence as there was no peace and security given to the people.

Condition of Papacy.

In Europe princes and peoples had lost trust in the Popes who were then deeply interested in their personal political ambitions, secular designs, and worldly lives and rivalries. They did no longer command respect and obedience. The papal court had become corrupt. Justice was perverted. Ecclesiastical posts were sold and the morals were low. In the middle of the fourteenth century they had left Rome and established their court at Avignon in France (1307-1377) where they fell under the power of the French kings and became French bishops rather than the common fathers of Christendom. In 1378 a disputed election plunged the church for forty years into a civil war, in which the rival popes did not scrupple to act basely. When the Council of Constance in 1417 ended the Schism, the Popes were found more anxious to restore their

personal authority and prevent any thorough reform of their own court than to forward the interests of religion and to check the Turkish advance. The Conciliar movement, that is, the attempt to reform the church and the papacy through General Councils failed. It could not assert its supremacy over the church and the Pope. Papal absolutism in religion remained. Both the Popes and Princes were playing a game of selfishness.

Lacastrians and Papacy.

The Lancastrian kings being weak in their title to the throne made friends with the Popes by supporting papal authority and neglecting to take notice of papal abuses. The Statutes of Provisors and Praemunire were not enforced. The English church fell more and more under the direct control of the Pope. The clergy were unable to resist papal claims. The system of provisions flourished and the buying of benefices became more rampart. Papal legates were recognised. They administered the affairs of the church. Agents of the Pope travelled in the country without any check or question, granted dispensations and sold indulgences.

The internal condition of the Church.

Wycliffe's reform movement had failed. The internal condition of the church was not satisfactory. The kings sided with the church in matters of persecuting heretics. Lollards were rigorously persecuted and burnt under the statute de Heretico Comburendo (1401). But the kings did not help the church in resisting papal claims. The power of archbishops and bishops became weakened in the presence of papal legates and agents who greatly interfered in the administration and revenues of the church. The convocation met only formally. Monasteries suffered from want of discipline. Some were extremely lax. Friars had become grasping, selfish, ambitious and degenerate. Some clergies were secular and corrupt. They had become poor. The ecclesiastical courts failed to exercise a general control over the religion,

morals and manners of both clergy and laity, and used their power only to exercise inquisitorial tyranny.

Army.

In military matters the new method of issuing Commissions of Array arose in the thirteenth century. They were issued by the king to royal officers for the forcible levy or impressment of a specified number of men. Under Edward I men thus impressed were taken into royal service and paid by the king. Under Edward II shires and townships were called upon to pay them. It became a great abuse and a new method of indirect taxation. The parliament had attacked it again and again in 1327, 1352, and 1404, and established the principle that except in cases of invasion such troops should not leave their counties, and then only by the acquiescence of the parliament and at the expense of the crown.

Great lords employed mercenaries in the shape of semifeudal and armed retainers. They supplied the king with these soldiers at a fixed rate of pay during the hundred years of war and also to meet other dangers.

Thus the army had been recruited on the principle (1) of national allegiance in the shape of the fyrd in the Anglo-Saxon and early Norman and Angevin times, (2) of feudal homage in the shape of military service after the Norman conquest till the system of scutage minimised its importance and (3) of pay in the shape of mercenaries foreign and native, in the shape of forcible impressment by Commissioners of Array, and in the shape of armed retainers by feudal lords.

The character of the English medieval state.

The English state was a growing polity in which the relations of the State and the church, and those of the king and his feudal vassals had to be and were tried to be adjusted. In adjusting these relations on a workable basis constant fights and struggles went on for supremacy, equality or a larger

share and control in the distribution of power. The fighting parties usually happened to be the king and barons versus the people, or the king and the people versus the barons, or the barons and the people versus the king, or the king as the head of the State versus the bishop as representing the church as an equal and separate or supreme religious power.

The people based their claims on the sanctity of their old customs, laws and welfare. The barons did them on the legality of their feudal contract and customs. The king asserted his power on the strength of the needs of peace and order and of a hereditary right or military conquest and also as representing the people. The church emphasized her spiritual origin and power and consequently her supremacy over secular power or at least its independence of it. But no one would yield to the supremacy of the State as representing the full legal sovereignty of the people. There was in fact no conception of the modern sovereign state. The aim of the political organisation was an adjustment of the mutual relations of the various communities, classes and guilds. Medieval society was a community of communities possessing and asserting their group and class rights and privileges against other groups and powers and also against the encroachments of the political power. The aim of the political power was accepted to be purely political, that is, of protection of group interests and relations. It was to have no initiative or control in promotive or social, religious, economic and educational functions. It was to be merely the police of the society. The king's duty was to assure the existing liberties and customs of the self-governing groups and associations and not to create for them or for himself any new liberties. His grants of charters to lords or towns or the realm were merely assurances of their rights and privileges which had been encroached upon by previous kings or other holders of power.

But the idea of the State first arises in the privileged position possessed by the king on account of the necessity of war or his conquests. It leads to the growth

of the king's peace at the cost of the communal peace owing to the exigencies of peace and war. He begins to receive wite or a share in compensation in every crime. There arises a new class of offences against him which are punished by him as treason, oferhyrnes etc. His peace and protection are sought by weak men who give up their old liberties and receive his protection and whatever liberties he allows. Thus constant wars and insecurity of life and property even during peace lead to the growth of the king's power over men who commend themselves to him or who are conquered and whose lands are confiscated or regranted to them on the promise of loyalty. The king who becomes the owner of the land gradually imposes his peace and jurisdiction under the exigencies of peace and war over all and destroys the original folk-peace and folk-jurisdiction as it is organised in local institutions of moots and courts. This he has to do in order to adjust conflicts over a larger territorial extent and new and old interests created and maintained under the new circumstances. The power of old groups, tribal or local, gradually passes to strong men, and ultimately the king who is the strongest politically subordinates others to his own interests and power.

The next step is to enlarge the king's personal and private interests and to make them identical with the people's or nation's interests as a whole. This is what happened in the Tudor Period. Hence they could centralise all power in the hands of the monarchy and later on, the king-in-Parliament became the full legal sovereign. But the process of centralisation in creating king's peace, courts, justices and laws started during the time of Henry II after the period of feudal anarchy which prevailed during the Civil Wars of Stephen and Matilda had ended. Henry not only tried to centralise administration and justice but also to assert the claims and independence of political power against those of the religious power. During the process of transition of the monarchy from the tribal stage where it was communally limited to the national stage where it was

limited by a territorial Parliament, it showed characteristics of absolutism and irresponsibility based partially on rights of conquest, the principle of heredity or legitimacy, and the idea of divine origin and right of kingship. There was no normal or constitutional method by which a will or right opposed to that of kings could act or express itself. Under the feudal system which largely prevailed during this transition period, even if there were private liberties of persons and localities there was no final arbiter or superior in the shape of a court or committee or a person which could decide the conflict between the king's powers and other person's liberties. Rebellion or civil war was the only way. Success of one party gave its claims a temporary legitimacy till it was upset by a new rebellion or civil war. The king was the political head. His officers were his servants. The central machinery was created and controlled by him. The expenses of government came out of his personal income from his land, the dues from his vassals, and fines from his courts as he was held to be the fountain of justice. Offences against political order were taken to be against him personally. The Concilium and the Curia were his own advisory bodies doing his business. In political matters the people could only petition him and pray for the redress of grievances. He was the greatest owner of land. Hence were his great military strength and his great resources in men and money. As the political head of the people he was still entitled to certain services of the people for the sake of their protection. Thus he could call the fyrd or levy a Danegeld. Still the usual expenses of government were to be met from his private income and resources and also from the services in men and money supplied by his vassals. Barons were not independent chiefs or powers. There was a final appeal to him against their injustices and encroachments. His religious annointment gave him a consecrated position.

But there were four forces or elements in the medieval period which constituted as checks on royal

power and which developed the spirit of assertion and opposition amongst the various classes and interests. One was the conception and character of religious power; the second was the supremacy of custom and common law; the third was the contractual character of the feudal law, and lastly, there was the general conception of the political power, being considered to be only for protection and not an irresponsible sovereign power as found expressed in coronation oaths. The conflicts of church and state, papacy and empire always kept before the people the idea of the limited or dependent character of the secular power. The inherent power of people's customs and later on the idea of the supremacy of common law kept the idea of 'law' as being above the king and not king as being above the law. Feudal ideas gave a security to the powers and privileges of classes which the king could not encroach upon. But none of these forces being exactly defined and marked out there was a constant encroachment of one upon the other. Ultimately after a number of reverses and setbacks the king succeeded in making his power supreme over religion, feudal classes and the people as a whole with the help of Parliament. In this growth of royal power the kings were helped by the needs of security during constant wars and against the turbulence of feudal elements, by the theories of the Roman law, by the advocates of imperial power and of divine right theorists. Under these various conflicting influences a school of thought arose which emphasized the supremacy of royal power in the shape of the royal prerogative. It declared the power of the king to do things which no one else could do and his power to do them in a way in which no one else could do them. He was considered to possess power to do all things which were not expressly forbidden him by the law or by custom equivalent to law or by feudal agreements which he had himself made. Residuary power lay with him, and in many respects he was distinctly recognised as being above the law. He could not be sued. He created new principles of law and jurisdiction under the name of

equity and equity courts. His consent was finally necessary for the validity of any new law. He could set aside a judicial sentence by granting pardon. Finally he was considered responsible to God alone for his acts as he was considered the representative of God and as such possessed extraordinary and extra legal powers for securing right and justice. But these were really residuary powers and as such he was above the public law. Therefore he had two aspects. He was both above the law and the law was above him. From the point of view of the right of conquest, as feudal sovereign, as God's representative and as the possessor of the prerogative and the final authority he was above the law. But as one who took the oath of coronation, and who promised and gave charters of liberties and customs, as a party to the feudal contract, as the administrator of common law and its obligations, as the follower of the religious bindings and common law, he was bound and limited in his sovereign power. In spite of all this the king was unlimited in his political power and was becoming so in other matters owing to his military strength. Therefore the discontented and the afflicted adopted the remedy of rebellion, but its results were uncertain. It was the development of the remedy of constitutional checks in the shape of Parliament and its power of purse and control over taxation which created a peaceful and normal remedy against the growing and encroaching absolutism and irresponsibility of the kingly power. The constitutional history of England therefore treats of the origin and development of this new remedy called Parliament and also of its powers, functions, and privileges acquired or created during the course of her history.

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ERRATA.

Page 8, line 3, after Cæsar's Account insert '(*First Century B.C.*)'
Page 9, line 22, read *principes* for principles.
Page 10, line 17, ,, *Thor* for Thunor.
,, line 18, ,, *wodin* for woden.
Page 13, line 39, ,, *thralls* for thrals.
Page 34, line 14, ,, *Chadwick* for Chandwick.
Page 40, line 9, insert '*the*' before candlescot.
Page 49, line 12, read '*cottars*' for cotters.
Page 57, line 21, ,, *them* for him.
Page 59, line 15, insert *and* after Europe.
Page 60, line 33, ,, *the* beofre English.
Page 64, line 27, read *knight* for night.
Page 65, line 2, ,, *balance* for alance.
,, line 12, in the marginal note, read *growth* for growth's.
,, line 24, in the marginal note, read *Eyre* for Iyre.
Page 68, line 24, read *town* for tour.
,, line 40, ,, *would* for will.
Page 71, line 19, in the marginal note, read *constitutions* for constitution.
Page 73, line 38, drop the whole line and insert *Hugh, Bishop of Lincoln* (*1197*) *refused the.*
Page 75, line 8, read *was* for is.
Page 78, line 11, insert *be* after 'were to'.
Page 82, line 25, read *was* for is.
Page 82, line 37, ,, *was* for is.
Page 84, line 5, ,, *county* for country.
Page 86, line 27, in the marginal note, read *Burgh* for Murgh.
Page 89, line, 29, read *chancellor* for chancellar.
Page 90, line 29, drop *By* before 'the Mise'.
Page 94, line 17, read *concilium* for councilium.
Page 94, line 32, read *a* for 'the'.
Page 95, line 32, read *banco* for bance.
Page 97, line 8, insert *the* before 'justiciarship'.
Page 98, line 21, insert *the* before 'chancery'.
Page 100, line 8, insert *and* before 'to knights'.
Page 100, line 33, read *commissioners* for commissions.
Page 107, line 21, read *Henry III* for Henry II.
Page 110, line 36, read *cooperation* for cooperated.
Page 111, line 10, ,, *lesser* for lessor.
Page 112, line 9, drop *the* before 'barons'.
Page 112, line 13, read *was* for is.

Page 113, line 13, ,, *communitas* for communities.
,, ,, in the marginal note, read *communitas* for communities.
Page 114, in the marginal note, read *town communitas* for toun communities.
Page 116, line 3, read *borough* for bororgh.
Page 117, line 15, ,, *county* for country.
Page 120, line 19, ,, *was* for is.
Page 121, line 2, ,, *parliament* for parliaent.
Page 121, line 12, ,, *boroughs* for bororghs.
Page 122, line 21, drop *a* before shire.
Page 123, line 14, read *it* for he.
Page 131, line 11, ,, *It* for If.
Page 135, line 4, drop *it* after parliament.
Page 140, drop the second marginal note, *The good Parliament*.
Page 146, in the marginate note, read *Barons* for Barnos.
Page 152, line 20, insert *the* before chancellor.
Page 153, line 13, put inverted commas ('') after enforce.
Page 162, line 25, read *was* for is.
Page 169, line 1, ,, *1295* for 1209.
Page 173, line 17, ,, *Arundale* for Arundel.
Page 177, in the first marginal note, read *Parliament* for Parliaments.
Page 182, line 10, read *Edmund* for Edmond.
Page 194, line 1, ,, *exercised* for evercised.
Page 198, in the first marginal note, read *Lancastrians* for Lacastrians.

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